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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SEVENTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

CONTENTS

	Paragraphs	Page
List of relevant Governing Council decisions		8
List of category "C" loss types		9
Introduction	1 - 5	10
I. LEGAL FRAMEWORK AND GENERAL ISSUES RELATING TO THE PROCESSING OF CATEGORY "C" CLAIMS	6 - 36	11
A. Subject matter jurisdiction	8 - 9	11
B. Jurisdictional period	10 - 12	12
C. Location of loss	13	13
D. Eligible claimants	14 - 26	13
1. Iraqi nationals	14 - 15	13
2. Members of the Allied Coalition Forces	16	13
3. Detained or missing persons	17 - 19	14
4. Family members eligible to submit death and MPA claims	20	14
5. Claims submitted by a third person	21 - 25	15
6. Claims for individual business losses	26	16
E. Causation	27 - 30	16
F. Evidentiary standard for category "C" claims	31 - 35	17
G. Currency exchange rate	36	18
II. CATEGORY "C" CLAIMS PROCESSING	37 - 48	19
A. Mass claims processing	37 - 41	19
B. Registration and organization of claims data	42 - 45	20
C. Electronic processing of category "C" claims	46 - 48	21
III. CLAIMS EVALUATION AND COMPENSATION METHODOLOGIES	49 - 83	22
A. Threshold issues common to category "C" claims in all instalments	49 - 83	22
1. Claimant identity and presence or residence in Iraq or Kuwait	49 - 51	22
2. Completion errors and correction efforts	52 - 53	23
3. Multiple recovery and duplicate claims	54 - 83	23
(a) Intra-category duplicate claims	54 - 59	23
(b) Inter-category duplicate claims	60 - 77	25
(c) Multiple recovery due to compensation from non-Fund sources	78 - 83	30

	Paragraphs	Page
IV. EVALUATION METHODOLOGIES AND COMPENSATION CRITERIA	84 - 370	31
A. Loss type "C1": damages arising from departure, inability to leave or return, decision not to return, hostage-taking or other illegal detention	84 - 112	31
1. Damages arising from departure, inability to leave or return or decision not to return ("C1-Money" losses)	84 - 93	31
(a) Experience of the first instalment .	85 - 89	32
(b) Refinement of the processing and valuation methodology since the first instalment	90 - 92	33
(c) Recommendations for claims for C1-Money losses in the seventh instalment . .	93	34
2. "C1-MPA" losses: claims for mental pain and anguish arising from hostage-taking, illegal detention or being forced to hide . . .	94 - 112	35
(a) Claims for C1-MPA losses for hostage-taking or illegal detention for three days or less	96 - 99	35
(b) Claims for C1-MPA for hostage-taking or illegal detention for more than three days	100 - 104	37
(c) Claims for C1-MPA for forced hiding	105 - 110	39
(d) Confusion between "mental pain and anguish" submitted as "serious personal injury" in category "B" with C1-MPA losses	111 - 112	40
B. Loss type "C2": damages arising from personal injury	113 - 141	41
1. C2 claims for medical expenses ("C2-Money" claims)	115 - 134	41
(a) Experience of the first instalment .	115 - 118	41
(b) Development of personal injury jurisprudence since the first instalment	119 - 120	43
(c) Findings of the Panel in the seventh instalment	121 - 134	44
2. C2 claims for mental pain and anguish ("C2-MPA" claims)	135 - 141	48

	Paragraphs	Page
(a) Findings of the Panel in the first instalment	135 - 137	48
(b) Findings of the Panel in respect of Claims for C2-MPA included in the seventh instalment	138 - 140	49
(c) Recommendations for claims for C2-MPA included in the seventh instalment .	141	50
C. Loss type "C3": damages arising from the death of the claimant's spouse, child or parent .	142 - 143	50
1. Claims for C3 death losses for pecuniary amounts ("C3-Money" losses)	144 - 173	51
(a) Experience of the first instalment .	144 - 147	51
(b) Development of death loss jurisprudence since the first instalment	148 - 149	52
(c) Findings of the Panel in the seventh instalment	150 - 173	52
2. Claims for C3 mental pain and anguish for death of a spouse, child or parent ("C3-MPA" losses)	174 - 177	60
(a) Experience of the first instalment .	174 - 175	60
(b) Findings of the Panel in respect of claims for C3-MPA included in the seventh instalment	176	60
(c) Recommendations for claims for C3-MPA included in the seventh instalment	177	61
D. Loss type "C4": damages arising from personal property losses	178 - 221	61
1. C4 damages arising from losses of clothing, personal effects, household furnishings and other personal property items ("C4-CPHO" losses)	178 - 199	61
(a) Experience of the first instalment .	179 - 189	61
(b) Refinement of the processing and valuation methodology since the first instalment	190 - 198	64
(c) Recommendations for claims for C4-CPHO losses in the seventh instalment . .	199	66

Paragraphs Page

2. Claims for C4 motor vehicle losses ("C4-MV") . . . . 200 - 221 66
(a) Findings of the Panel in the first instalment . . . . 200 - 209 66
(b) Findings of the Panel since the first instalment . . . . 210 - 220 69
(c) Recommendations for claims for C4-MV losses in the seventh instalment . . 221 73
E. Loss type "C5": damages arising from losses from bank accounts, stocks and other securities 222 - 248 73
1. Claims for losses arising from bank accounts ("C5-BA") . . . . 223 - 238 74
(a) Claims for losses arising from bank accounts in Kuwait 226 74
(b) Claims for losses arising from bank accounts in Iraq . . . . 227 - 238 75
2. Claims for losses arising from stocks or securities ("C5-SOS") . . . . 239 - 248 78
(a) Findings of the Panel in the first instalment . . . . 239 - 242 78
(b) Commission jurisprudence since the first instalment 243 79
(c) Findings of the Panel for C5-SOS losses in the seventh instalment . . . . . 244 - 247 79
(d) Claims for C5-SOS losses in the seventh instalment 248 80
F. Loss type "C6": damages arising from loss of income, unpaid salaries or support . . . . . 249 - 300 80
1. Losses relating to unpaid salaries and other income ("C6-Salary" losses) . . . 250 - 282 80
(a) Findings of the Panel in the first instalment . . . . 250 - 258 80
(b) Evolution of C6-Salary methodology since the first instalment . . . . . 259 - 282 83
2. Losses related to support on the "C6" page ("C6-Support") . . . . 283 - 291 89
89
(a) Findings of the Panel in the first instalment . . . . 283 - 285 89

Paragraphs Page

(b) Jurisprudence of the Commission in respect of employment-related support losses 286 90
(c) Findings of the Panel in the seventh instalment . . . . 287 - 290 90
(d) Recommendations for claims for C6-Support losses in the seventh instalment . . 291 91
3. Claims for MPA on the "C6" page ("C6-MPA") 292 91
(a) Findings of the Panel in the first instalment . . . . 293 - 294 92
(b) Findings of the Panel in the second instalment 295 92
(c) Findings of the Panel in the seventh instalment . . . . 296 - 298 92
(d) Recommendations for claims for C6-MPA losses in the seventh instalment . . 299 93
G. Loss type "C7": damages arising from real property-related losses ("C7" real property) 301 - 327 93
1. Findings of the Panel in the first instalment . . . . 301 - 305 94
(a) Fact of ownership of C7 property . . 306 95
(b) Fact of loss and causal relation to invasion 307 95
(c) Valuation of claims for C7 repair costs . . . . 309 - 310 95
(d) Valuation of claims for C7 losses of rental income . . . . 310 - 312 96
(e) Claims for C7 real property losses located outside Kuwait 313 96
2. Findings of the Panel in the seventh instalment 314 97
(a) Claims for C7 real property losses located in Kuwait . . . . 315 - 319 97
(b) Claims for C7 real property losses located outside Kuwait . . . . 320 - 325 98
(c) Recommendations for claims for C7 real property losses in the seventh instalment 326 100
H. Loss type "C8": damages arising from individual business losses ("C8-Business") . . . . 327 - 369 100

	Paragraphs	Page
1. Legal framework for consideration of C8-Business losses	327 - 329	100
2. Findings of the Panel in the first instalment	330 - 342	101
(a) Composition of claims considered in the first instalment	330	101
(b) Business practice in Kuwait and the "rent-a-permit" system	331 - 332	101
(c) Erroneous completion of claims form	333	102
(d) Criteria for compensability in the first instalment	334 - 340	102
(e) Valuation in the firs instalment .	341	104
3. Finding of the Panel in the seventh instalment	342 - 368	104
(a) Eligibility of claimants	343 - 346	105
(b) Situs of the business outside Iraq or Kuwait	347 - 350	105
(c) Situs of the business in Israel . .	351 - 354	106
(d) Review of claims submitted by Pakistan for "other losses" ("CS-Other") . .	355	107
(e) Processing methodology for the seventh instalment	356 - 367	107
(f) Recommendations for claims for C8-Business losses included in the seventh instalment	368	112
I. Loss type "C9": claims for other damages ("CS-OT")	369	112
V. CLAIMS INCLUDED IN THE SEVENTH INSTALMENT	370 - 373	112
VI. RECOMMENDATIONS	374 - 375	114
Notes		119

LIST OF TABLES

	Page
1. Level of evidence submitted in support of C8-Business losses for claimant groups sampled	108
2. Sectoral distribution of claimants for C8-Business losses	110
3. C8-Business losses per sector per submitting entity	110
4. Hypothetical calculations for C8-Business losses .	112
5. Summary of seventh instalment recommendations . .	115

List of relevant Governing Council decisions

Decision number	Title	Document number
1	Criteria for Expedited Processing of Urgent Claims	S/AC.26/1991/1
3	Personal Injury and Mental Pain and Anguish	S/AC.26/1991/3
4	Business Losses of Individuals Eligible for Consideration under the Expedited Procedures	S/AC.26/1991/4
5	Guidelines relating to paragraph 19 of the Criteria for Expedited Processing of Urgent Claims	S/AC.26/1991/5
7	Criteria for additional Categories of Claims	S/AC.26/1991/7/Rev.1
8	Determination of Ceilings for Compensation for Mental Pain and Anguish	S/AC.26/1992/8
9	Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation	S/AC.26/1992/9
10	Provisional Rules for Claims Procedure	S/AC.26/1992/10
11	Eligibility for Compensation of Members of the Allied Coalition Forces	S/AC.26/1992/11
12	Claims For Which Established Filing Deadlines Are Extended	S/AC.26/1992/12
13	Further Measures to Avoid Multiple Recovery of Compensation by Claimants	S/AC.26/1992/13
15	Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause	S/AC.26/1992/15
21	Multi-Category Claims	S/AC.26/Dec.21 (1994)
24	Multi-Category Departure Claims	S/AC.26/Dec.24 (1994)

List of category "C" loss types

Short name	Description of loss
C1-Money	Losses related to departure and relocation costs
C1-MPA	MPA from being illegally detained, held hostage or forced to hide
C2-Money	Medical or other expenses related to personal injury
C2-MPA	MPA from suffering a serious personal injury or from witnessing the intentional infliction of serious personal injury on a spouse, child or parent
C3-Money	Lost support from a deceased spouse, child or parent (C3-Support) or medical, burial or other expenses relating to the death of a spouse, child or parent (C3-Other)
C3-MPA	MPA from the death of a spouse, child or parent or from witnessing the intentional infliction of events leading to the death of a spouse, child or parent
C4-CPHO	Losses related to personal property, including clothing, personal effects, household furnishings and other losses
C4-MV	Losses related to motor vehicles: theft, total loss (C4-MV) or repairs (C4-MV-Repairs)
C5-BA	Losses related to bank accounts in Iraq or Kuwait
C5-SOS	Losses related to stocks or securities
C6-Salary	Losses related to income or salary
C6-Support	Losses related to support
C6-MPA	MPA arising from the deprivation of all economic resources so as to seriously threaten the claimant's survival and that of the claimant's spouse, children or parents
C7-Repairs	Losses related to repairs made to real property
C7-Other	Lost rental income and other losses related to real property
C8-Business	Losses related to business activities of individuals
CS-Other	Any other damages not covered by the above

Introduction

1. This is the seventh and final report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure [1] (the "Rules"). This report contains the determinations and recommendations of the Panel in respect of the seventh instalment comprising 71,069 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. As happened with the Panel's first report, approved by the Governing Council in December 1994, but which has not occurred at any time since, this seventh report includes category "C" claims containing all loss elements and discusses the evaluation methodologies and compensation criteria approved by the Panel for each loss type for which compensation may be requested in the category "C" claim form. In accordance with its previous practice, the Panel has reviewed the seventh instalment of category "C" claims in a continuum with the processing of the first six instalments. The seventh report should be considered together with the first six reports, [2] all of which have been approved by the Governing Council. [3] The claims included in this report have therefore been processed in accordance with previous determinations and decisions approved by the Governing Council.

3. In contrast to previous reports, however, this report not only reflects the claims reviewed and the work performed by the Panel since it issued its recommendations concerning the sixth instalment of category "C" claims in June 1998, it also summarizes issues contained in the claims reviewed in previous reports. It describes the criteria developed or refined by the Panel for each loss element as well as the compensation methodologies applied. As such, this report reflects the final statement of work performed by the Panel and completes the processing of the more than 420,000 individual category "C" claims received by the Commission.

4. It is anticipated that at least one report containing corrections to category "C" claims pursuant to article 41 of the Rules will be issued at some time subsequent to this report. Therefore, no corrections to amounts awarded to category "C" claims reported in previous instalments are included in this seventh instalment report.

5. To complete all tasks related to the processing of the seventh instalment of category "C" claims, the Panel met with the secretariat at the Commission's headquarters in Geneva on 15-16 June 1998, 30 September-1 October 1998 and 30 March 1999 in addition to regular communications with the secretariat and ongoing review of work-in-progress.

I. LEGAL FRAMEWORK AND GENERAL ISSUES RELATING TO THE PROCESSING OF CATEGORY "C" CLAIMS

6. In its review of all category "C" claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of international law. In addition to the loss and identifier information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the seventh instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; further communications by submitting Governments and international organizations providing background information related to their claims; and relevant United Nations and other reports.

7. Throughout the processing of category "C" claims, decision 1 of the Governing Council [4] has had particular relevance in defining the Panel's mandate. In decision 1, the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be the "most urgent" claims. Accordingly, decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures such as "checking individual claims on a sample basis, with further verification only if circumstances warranted". Consistent with this decision, article 35(2) of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts, such as "those below US$20,000".

A. Subject matter jurisdiction

8. The subject matter jurisdiction for category "C" claims is defined in Governing Council decisions 1, 3, 4, 8, and 11. These decisions establish, inter alia, the types of losses that are compensable under category "C". In particular, paragraph 14 of decision 1 provides that compensation in respect of category "C" losses will apply to death or personal injury, or to losses of income, support, housing or personal property, or medical expenses or costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait up to US$100,000 per person. Decision 3 further establishes seven categories of mental pain and anguish ("MPA") losses for which compensation may be awarded while decision 8 provides guidance for MPA awards and establishes maximum MPA award amounts. Decision 4 describes the types of business losses of individuals that may be eligible for consideration under the expedited procedures. Decision 11 provides for the eligibility of compensation for loss or injury of members of the Allied Coalition Forces.

9. The category "C" claim form approved by the Governing Council contains further elaboration of the particular losses that may be claimed in category "C" on eight separate loss pages. In addition, there is a ninth category of loss known as "any other damages" for which the claimant must include a schedule that provides the details of what happened, a description of damages, and total value of loss. As a result, one category "C" claim form may constitute the aggregate of more than twenty different types of damages. Based on an estimated average of three loss types for which compensation may be requested per claim, the resolution of the approximately 420,000 category "C" claims has involved the processing of up to 1.3 million separate loss elements. Each of these diverse loss elements requires the application of a separate set of criteria for determination of loss compensability, a separate valuation method and a separate processing methodology.

B. Jurisdictional period

10. In its First Report, the Panel concurred with the determination of the Panel of Commissioners for category "B" claims ("the 'B' Panel") [5] that, in principle, the events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with its invasion and occupation of Kuwait. The occurrence of loss outside that time frame imposes, in general, an extra burden on a claimant to explain why the loss should be considered a direct result of Iraq's invasion and occupation of Kuwait. [6]

11. The Panel took note of the Governing Council's decision 12, [7] however, and concurred with the "B" Panel's findings that serious personal injuries or deaths that occurred after the relevant time period could be compensable where the cause of an injury or a death could be linked to the invasion and occupation and specifically when the personal injury or death resulted from a mine explosion. [8] Further, the Panel determined that those claimants departing from Iraq or Kuwait after the jurisdictional period who could establish the presence of "special circumstances", such as an inability to depart from Iraq or Kuwait due to being held hostage, or otherwise being detained by Iraqi authorities, were not precluded from receiving compensation for their departure and relocation losses. [9]

12. In its Sixth Report, the Panel also determined that departure from Iraq or Kuwait prior to the jurisdictional period may not, in and of itself, be a bar to compensation for losses arising from an inability to return or a decision not to return to Iraq or Kuwait. [10] Such losses may be compensable so long as the pre-invasion departure date is no earlier than 1 June 1990 and a Kuwaiti civil identification number or an Iraqi residency permit number is indicated in the relevant electronic field. [11]

C. Location of loss

13. The Panel determined in the First Report that, subject to the requirements that must be met for a claimant to be eligible for compensation under particular category "C" losses, the Commission has jurisdiction over a claim regardless of where the loss occurred. However, the Panel found that where the losses occurred in Iraq or Kuwait, they can more easily be attributable to Iraqi actions, whereas losses based on events occurring outside Kuwait or Iraq need to be more fully substantiated. [12]

D. Eligible claimants

1. Iraqi nationals

14. Decision 1, paragraph 17, provides that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". Forty-seven category "C" claims indicated "Iraqi" in either the "nationality" or the "dual nationality" fields of the claimant identification page of the electronic claim form. All of those claims were reviewed manually and, where the Panel determined that there was ambiguity, additional information was solicited from the submitting Governments concerned.

15. After studying the facts in respect of the category "C" claims identified, and with particular reference to the considerations of the Panel of Commissioners for category "A" claims ("the 'A' Panel") in its decision, [13] the Panel, in its Sixth Report, endorsed the "A" Panel's holding on eligibility of Iraqi dual nationals to submit claims to the Commission. Thus, based on the facts before it, the "C" Panel held that a claimant with Iraqi dual nationality who had applied for or acquired a second nationality before the criteria for claims eligibility had been established by the Governing Council in decision 1 on 2 August 1991 ("the relevant date"), should be considered to be a bona fide holder of the second nationality. [14] Using that standard, the Panel recommended in the Sixth Report that compensation be awarded for 40 of the 47 claims reviewed. Seven claims were rejected for failure of the claimants to establish that they were bona fide holders of a second nationality. [15]

2. Members of the Allied Coalition Forces

16. Decision 11 provides that "members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq" except under certain specified conditions. [16] To the extent that such claims have been identifiable in category "C", it has been in the context of hostage-taking situations and personal injuries in which claimants met the three conditions specified.

3. Detained or missing persons

17. As was the case with the first instalment, this final instalment includes category "C" claims submitted on behalf of individuals who are asserted to be either still missing or in detention in Iraq. In the First Report, the Panel concluded, in accordance with decision 12 of the Governing Council, that claims submitted for MPA suffered by individuals alleged to be held in detention by the Government of Iraq may not be considered for compensation while the individual's status remains unknown.[17] Also in accordance with decision 12, claims for MPA suffered by detainees should be submitted by the detainees within one year of their release. Alternatively, once a Government has determined that a detainee or missing person is deceased, the family of the deceased may submit a claim, together with the appropriate documentation, for the death of the deceased.

18. Throughout the category "C" claims programme, communications have been received from submitting Governments that have provided clarification of the circumstances for various category "C" claimants with "missing or detained" status. In such cases, the claims have been recommended for resolution accordingly. Further, using the names and identifier data of category "C" claimants having a "missing or detained" status in the electronic database, the secretariat has performed cross-matching exercises against names and identifier data of deceased persons. In this manner, four such claims have been resolved in this seventh instalment.

19. The 331 claims for which no additional information has been received, or for which checks to ascertain final status have produced no results, will remain in pending status until such time as the Executive Secretary determines that the processing of all remaining claims before the Commission is likely to take no more than one year to complete and so notifies the Governing Council pursuant to decision 12, paragraph 2. As part of this seventh instalment, each Government with claimants who remain in such pending status will receive a list of the claimants concerned.

4. Family members eligible to submit death and MPA claims

20. In its First Report, the "C" Panel adopted generally the "B" Panel's conclusions [18] on the definition of "family", where relevant to category "C" claims. The Panel concluded that for claims for the death, or for witnessing the intentional infliction of events leading to the death or injury of a family member, or for the family ceilings for MPA established in decision 8, the "family unit" is composed of the deceased person, the injured person or the person who was deprived of all economic resources, that person's parents, all of his or her children, and his or her spouse.[19] Specifically, the Panel also adopted the "B" Panel's conclusions in respect of the particular situation where a deceased person has more than one legally recognized wife. In such cases, the Panel considers that each wife

and the children born from that union constitute a separate "family unit" for the purposes of applying the MPA ceiling.

5. Claims submitted by a third person

21. Category "C" claims are intended to be submitted by each individual who actually incurred the losses or injuries resulting directly from Iraq's invasion and occupation of Kuwait. However, as was the case in the first instalment, there are cases of claims being submitted by persons other than those who incurred the losses. The Panel confirms that, as a general rule and subject to the specific guidelines established by the Governing Council for death and MPA claims, individuals other than the persons actually incurring the loss(es) are not entitled to submit category "C" claims. [20]

22. In consideration of the fact that some persons may be considered to be legally entitled to claim on behalf of another, e.g., a parent for a minor child, a person acting under a power of attorney received from the rightful claimant or pursuant to a court decision, the Panel recognized that this rule must be applied taking due account of the circumstances of the situation. Further, the concept of the family as a unit should be borne in mind, as well as the legal competence or ability of the rightful claimant. Thus, the Panel recognized the fact that in several situations one claimant may have submitted one claim on behalf of the family for the property, employment or MPA losses suffered by every member. This has, however, resulted in a situation where "multiple" claims were created in a category that was essentially intended to reflect the losses of one individual per claim submission. [21]

23. So long as the losses claimed in category "C" claims were related to MPA suffered by living family members or encompassed one loss, e.g., for personal property on behalf of the family, the claims were generally processed as is, with modification as deemed to be necessary in the interest of equitable treatment. Claims were distinguished as "multiple" claims in two instances: (a) when two or more identifiable individuals submitted one claim for separately identified non-MPA losses together in one claim file with one assigned claim number; or (b) when two or more claims were submitted by individuals related to each other (usually family submissions) under separate claim numbers. [22] In the former situation, the Panel's concern was that the individual claimants could be potentially disadvantaged by the US$100,000 category limitation. In the latter, the Panel's concern was with unidentified overlap and double-claiming for the same loss elements.

24. Approximately 1,200 claims were identified as reflecting both of these concerns. The claims were set aside for review for "multiple" claim issues and, following that review, have been included in this seventh instalment. The review adjusted losses claimed in related separate claims as appropriate and also confirmed that most claims that were included in

one submission concerned separate employment-related losses of spouses. If there was a clear intention to submit the claim as one claim, so long as no existing claim in the name of the other claimant(s) could be located and none would be clearly disadvantaged by the category limitation on recovery, the claim was left as a single submission, with a separate loss page created to reflect the employment loss of the spouse.

25. However, in cases where there was a clear intention to submit claims separately,[23] so long as duplicate claims did not exist and amounts could be adjusted so that double recovery for the same losses would be avoided, the secretariat recommended that the claims be separated and individual category "C" claims be created. As a result, the Panel determined that twelve of the claims reviewed be separated to reflect the actual number of individual claimants. The new claims were assigned claim numbers accordingly for application of the loss criteria and methodologies in this instalment.[24]

6. Claims for individual business losses

26. Decision 1 provides that business losses of individuals may be submitted under category "C". Decision 4 describes the categories of individual claimants who are eligible to claim. Losses suffered by a business entity with separate legal personality may not be claimed in category "C". Thus, as discussed more fully in section IV *infra*, the Panel has determined that 103 claims for business losses where the business is a corporation or otherwise has separate legal personality are not eligible for consideration in category "C".

E. Causation

27. Security Council resolution 687 (1991) describes in comparatively broad terms the types of losses for which compensation is available and the parties who are eligible to claim for compensation. However, it limits Iraq's liability to payment of compensation for "direct" loss, damage or other injury. Therefore, throughout its consideration and review of category "C" claims, the Panel's substantive focus has been to distinguish between direct losses that are compensable and indirect losses that are not.

28. Guidance in respect of direct and indirect losses is provided in decision 1 at paragraph 18.[25] In addition, in decision 15, the Governing Council stated that the guidelines in decision 1 were not intended to be exhaustive and that there would be other situations where evidence can be produced showing that claims are for direct loss.[26] Decision 1 further states that compensation will not be provided for losses suffered as a result of the trade embargo and related measures. Decision 15 clarifies at paragraph 3 that losses suffered solely as a result of that embargo are not

compensable because the causal link between the invasion and the loss is not sufficiently direct.

29. In its First Report the Panel also considered relevant rules and principles of international law, noting that the terms "direct" and "indirect" are used synonymously with "proximate" and "remote" and that the most commonly used test in damage claims was whether the act of a State was the "proximate cause" of the loss suffered. [27]

30. Throughout its review of category "C" claims, the Panel has found that the difficulty lies in making this determination of "direct" causation. At the same time, the Panel noted in the First Report that considerations of logic, fairness and equity must enter into this determination, bearing in mind the general mandate from the Governing Council in respect of urgent claims in that expedited procedures be adopted. [28] Thus, the Panel's development of a mass claims processing system for category "C" claims, in accordance with its mandate, has influenced the Panel to make certain general presumptions regarding Iraqi causation, where deemed appropriate, given the legal and factual circumstances of the particular loss type, as discussed more fully in section IV infra.

F. Evidentiary standard for category "C" claims

31. In accordance with decision 1 and article 35(c) of the Rules, evidence must be provided regarding the circumstances surrounding the claimant's loss to demonstrate that the loss was a direct consequence of Iraq's invasion and occupation of Kuwait. However, this evidence need only be the "reasonable minimum" that is "appropriate under the particular circumstances of the case" and a lesser quantum of evidence is required for claims for smaller amounts. Thus, in its First Report, the Panel took into account a number of factors including the different types of evidence submitted by claimants and background information concerning the availability, relevance and validity of such evidence in the context of the circumstances surrounding the invasion and occupation of Kuwait. [29]

32. In the First Report, the Panel determined that the completed claim form itself constitutes an essential statement by the claimant, that identification documents submitted as proof of identity not only establish identity reliably but also serve to establish the fact of the claimant's presence in Iraq or Kuwait prior to or during the invasion, or an eligible family relationship. The Panel found further that personal statements may in some instances be the best available evidence to indicate the circumstances of the loss, but that the evidentiary weight to be given to such statements should vary in relation to the particular loss for which the statement is submitted. The Panel noted that while witness statements may often be the only corroborative evidence that a claimant may produce, such statements may be analysed in the light of the relationship between

witness and claimant, along with consideration of general evidentiary principles relating to the quality and relevance of witness statements.

33. The Panel observed that a diverse array of other documentary evidence in support of losses had been submitted, including receipts and invoices, contracts, official government documents, birth, marriage or death certificates or similar documents prepared by an official entity, bank and real property records, letters from relevant professionals, including doctors, insurance loss adjusters, former employers, photographs and newspaper articles. The Panel considered such evidence to be probative of the losses claimed.

34. The Panel further took into account the circumstances in Kuwait and Iraq during the invasion and occupation, characteristics and circumstances of international claimants from varied socio-economic groups, the transactional practices in Iraq and Kuwait, the assistance provided to claimants by their respective national claims programmes and other background information. This information may provide secondary or circumstantial support for the claims and for the allegations contained in the claimant or witness statements.

35. The Panel took notice that the scarcity of evidentiary support where massive numbers of claims are involved is not a phenomenon without precedent in international claims programmes, particularly in abnormal circumstances such as those prevailing in Iraq and Kuwait during the conflict. In its final analysis, however, the Panel considered that the degree and type of evidentiary support required is determined very much by the loss elements claimed, as discussed more fully in section IV *infra*, taking into account the hundreds of thousands of claims to be resolved, the diversity of those claims and the claimant population, as well as the evidentiary considerations and questions of valuation involved.

G. Currency exchange rate

36. In its First Report, the Panel determined that the currency exchange rate to be applied for the purposes of processing and paying category "C" claims is determined in the following manner.[30] For claims stated, in whole or in part, in Kuwaiti dinars, the currency exchange rate is the rate of exchange in effect on 1 August 1990 for converting Kuwaiti dinars into United States dollars. For claims stated, in whole or in part, in currencies other than the United States dollar or the Kuwaiti dinar, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies to United States dollars. Further, in respect of the currency exchange rate, the date that the loss occurred has been determined as a single fixed date for all category "C" claims. The date of the invasion, 2 August 1990, serves as that fixed date.

II. CATEGORY "C" CLAIMS PROCESSING

A. Mass claims processing

37. In its First Report, the Panel considered the magnitude of the task before it and concluded that with the large number of "urgent" claims to be reviewed in a relatively short period of time, the methods used to process them must necessarily depart from traditional approaches to claims adjustment or arbitration. Reflecting those considerations and the directives from the Governing Council that simple, expedited procedures be used to resolve claims within a reasonable period, the Panel also concluded that it was neither appropriate nor feasible then and would not be feasible in future instalments to review individually each element of loss for each category "C" claim. [31]

38. In its First Report, where appropriate, the Panel implemented methods, criteria and techniques that could expedite the processing of thousands of category "C" claims in subsequent claims instalments. Thus, the claims in the first instalment were viewed as a "sample" of other similarly-situated claims and were reviewed to formulate general criteria and conclusions, whether related to issues of causation, evidence, valuation or otherwise. By implementing statistical sampling and modelling techniques, the Panel aimed to adopt a balanced approach that would render practical and simple justice. At the same time, the Panel recognized the limitations of devising a mass-claims processing system based solely on the review of the 2,873 claims included in the first instalment. [32] Thus, the Panel foresaw that further development of the processing methods and criteria would be required for the resolution of all instalments of category "C" claims. [33]

39. As a result, the activities undertaken by the Panel and the secretariat since the first instalment of category "C" claims have focused on building a claims-processing system to apply the Panel's precedental determinations. The main components of this processing system include: the registration and organization of claims; the entry of claims data into a database; the verification of claims data; the development of an electronic processing system to apply processing criteria approved by the Panel; the reporting of awards; and the tracking of claims for audit purposes. [34] With the development of the claims database, additional information about the category "C" claims population became available which has allowed the Panel to reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods. The Panel has benefited from the use of standard statistical methods against the background of relevant precedents when it has conducted sampling projects to investigate evidence across all claim submissions and has performed computer database analyses that have enabled the validation of the various processing methods. Statistical expertise and specialized computer facilities have enhanced the modelling approach adopted by the Panel.

40. Thus, from the second to sixth instalments, the Panel adopted a "fast-track" approach to claims resolution that allowed it to concentrate on addressing certain loss types that lent themselves easily to expedited processing. These loss elements were those most frequently claimed: departure and relocation related losses; personal property losses; salary losses; bank account losses in Kuwait; and MPA related to being taken hostage or being forced to hide. While groups of claims posing various technical or jurisdictional issues were included in the sixth instalment, the more complex claims, containing losses relating to personal injury or death, real property and business, other jurisdictional or technical problems and multiple claim issues, have been left to this seventh, and final, instalment. This fast-track strategy has allowed the Panel to resolve all loss elements in approximately 346,000 category "C" claims in the two years since it was adopted and to complete the entire programme in a third.

41. As explained in the First Report, the Commission made a fundamental choice when it determined that computerized support would be necessary to process category "C" claims.[35] Essential processing functions that depend on the computerized organization of claims include the registration, tracking and grouping of claims, claims analysis, development of processing criteria, statistical modelling, selection of samples, extrapolation of sampling results, duplicate and cross-category claims checking, and the calculating and reporting of compensation. The database processing system has allowed for the electronic processing of all loss elements in category "C" claims.

B. Registration and organization of claims data

42. As described in the Second Report, given the large volume of category "C" claims submitted by the Governments of Kuwait and Egypt (approximately 166,000 and 92,500 claims, respectively), the secretariat provided claim numbers and data entry software to these Governments to allow the submission of their category "C" claims, not only on paper, but also in electronic format. Thus, once the electronic claims data received from Egypt and Kuwait had been loaded into the Commission's database, the secretariat's organizational tasks were primarily concerned with the approximately 165,000 remaining claims submitted to the Commission. These claims and their attachments required the organization of some seven million pages of paper, submitted by more than 70 Governments and international organizations.

43. After registering each claim electronically with a unique Commission-assigned tracking number and labelling claim forms and boxes with pertinent identifying information, the secretariat performed various preliminary reviews and verification of the claims, comparing original versions with the copies provided. While retaining the original forms, the secretariat forwarded the copies to a professional data entry firm for entry into

electronic format. The 165,000 claims included in the off-site registration process were integrated into the Commission's electronic database in March 1997. [36] Further, from July to December 1998, the secretariat entered another 2,895 category "C" claims into the database on-site. [37] These later claims primarily included late-filed submissions from Kuwait and Afghanistan that were approved by the Governing Council for late filing at its 19th session in December 1995 and 26th session in December 1997 respectively. Category "C" claims created from inter-category transfers, separated "multiple" claims, or claims otherwise not included in the earlier off-site data entry project were also entered on-site.

44. As the Panel noted in the First Report, many claims were submitted to the Commission in a poorly organized or incomplete state and entry of data into the claim forms reflected erroneous interpretations of the "C" claims category as a whole and of the category "C" claims form in particular. [38] These poorly organized and incomplete submissions, along with erroneous interpretations, have had consequences in terms of organization and electronic processing for the claims concerned. Moreover, after listing many of the complications and issues raised by large numbers of claims, [39] the Panel noted in the Second Report that for every problem that appears to affect large groups of claims, thousands of individual claims present unique complications. This instalment, more than any other, proves the point.

45. Because relevant information is absent or not clearly provided, or simply because the volume of claims corresponding to a particular type of loss does not permit individual examination, detailed distinctions regarding legal and factual issues are not always possible. [40] Given that a manual review of more than 420,000 highly diverse claims has not been a realistic option, the Panel's processing criteria and recommendations take account of similarly-situated sections of the claims population as a whole. This is in keeping with decision 1 and relevant precedents. Further, by compiling and comparing information about groups of claims, statistical sampling and modelling methods provide results that are efficient and, because they are based on presumptions of normalcy and on the reduction of individual bias, reasonable.

C. Electronic processing of category "C" claims

46. Since the second instalment, the Panel has reviewed groups of claims in a manner consistent with its "fast-track" approach in an effort (a) to refine the criteria for compensability of loss elements in accordance with the information received in respect of the numbers of claims and types of losses as identifiable in the database, (b) to render additional loss element types amenable to mass processing after sample reviews have been undertaken and analysed and (c) to isolate the most complex groups of claims. The composition of each subsequent instalment has therefore included claims with loss elements that could be resolved by the

methodologies developed for that instalment or with jurisdictional or technical problems that were addressed and ultimately resolved.

47. To assist with the Panel's processing of loss elements in a consistent fashion for all similarly-situated claimants, its decisions are either (a) converted into electronically implemented compensation methodologies that incorporate both eligibility criteria and valuation methodologies for the losses in question or (b) implemented by application of statistical models developed in accordance with standard statistical practice to claims that meet the threshold criteria for compensability for the loss element in question. Thus, an elaborate electronic processing cycle has been developed in which all tasks are tested, authorized, implemented and verified in a certain order and sequence for purposes of security and accountability.

48. Many of the loss elements processed in this seventh instalment required detailed claim-by-claim review as opposed to reviews of representative sample groups. Still, the preparation and processing of claims for this instalment have demonstrated that the mass claims processing approach is the only feasible manner in which equitable outcomes may be attained within a reasonable period of time, even for these former "non-fast-track" loss elements.

III. CLAIMS EVALUATION AND COMPENSATION METHODOLOGIES

A. Threshold issues common to category "C" claims in all instalments

1. Claimant identity and presence or residence in Iraq or Kuwait

49. The threshold issues considered by the Panel to be generally relevant for all category "C" claims are two: (a) whether the claimant's identity has been established; and (b) whether the claimant's presence or residence in Iraq or Kuwait on or prior to 2 August 1990 has been established.[41]

50. Based on its review of the first instalment, the Panel found that claimants had presented sufficient evidence in support of their identity. That evidence consisted of: (a) the identification evidence submitted by the claimants; (b) the affirmations on their claim forms stating that the information in the claim was correct; and (c) the affirmation provided by each submitting Government to the effect that the claimants were its nationals or residents. In addition, the secretariat performed preliminary reviews and assessments of the claims to determine whether the formal requirements had been met.

51. In respect of presence or residence in Iraq or Kuwait, the Panel noted that the vast majority of claimants had established the fact of their presence or residence in one of those countries by submitting passport or other identification documents with dates enabling the Panel to conclude

that they were indeed present during the relevant period. [42] The Panel further considered that the claim form itself provided certain basic information to verify the fact of the claimant's presence in Iraq or Kuwait, such as the claimant's address in one of the countries, the sponsor's name and address, bank name, account number, employer name and address. Of particular relevance are the Kuwaiti civil identification number [43] or Iraqi residency permit numbers.

2. Completion errors and correction efforts

52. As the Panel noted in its First Report and, once again, in its Second Report, a significant portion of category "C" claims have been completed in a poorly organized, improper and incomplete fashion. [44] This was due to a variety of factors, including the backgrounds of individual claimants, lack of instruction in completion of the form and misinterpretation of the claim form. The Panel's concern has been that, given the processing methodologies it has developed, such mistakes may have had a bearing on the claimants' entitlement to compensation and the extent thereof.

53. In addition to the measures taken by the secretariat to facilitate the complete and consistent capture of claims data that were described in the Second Report, [45] the secretariat has implemented extensive data amendment and improvement projects in the context of database-assisted identification and verification of claims presenting specific problems and the separation of complex claims for manual review. In addition to the quality control and verification precautions that have been taken for each of the previous electronic processing cycles, the processing cycle for the seventh instalment has also included a series of electronically implemented and programmatic amendment measures, each targeting a specifically identified aspect of the claims that might otherwise have prevented them from receiving the proper consideration for the loss elements concerned. Examples of typical errors and amendment measures taken as they apply to individual loss elements are described more fully in section IV _infra_ and the Panel is satisfied that the secretariat's efforts have mitigated the adverse effects to the extent feasible, in the context of mass claims processing.

3. Multiple recovery and duplicate claims

(a) Intra-category duplicate claims

54. The Panel has consistently noted throughout the category "C" claims programme that the large number of category "C" claims, the large number of countries submitting such claims and the fact that the claims were submitted in several different consolidated submissions have created the potential for intra-category duplicate claims and multiple recovery by the same claimant for the same losses within category "C". Therefore, using a special program similar to that used in the processing of category "A"

claims, before reporting category "C" claims in an instalment, the secretariat has, inter alia, first performed a cross-check on a number of available identifiers in order to exclude intra-category multiple recovery as much as possible. [46]

55. Following the March 1997 consolidation of all category "C" claims into the electronic database, the secretariat utilized the intra-category matching programme to identify approximately 12,400 potential duplicate category "C" claims. Thus, in its Sixth Report, the Panel set out a selection policy to determine which claim of more than one category "C" claim submitted by the same claimant from the same submitting entity would be compensable. The basic premise of the selection policy was that the claim submitted later or latest in time would be considered the claimant's final description of the losses claimed and would be the version processed. Thereafter, any other claims submitted by that same claimant would receive no compensation. [47] Accordingly, rejected duplicate claims from the same submitting Government or international organization were reported in the sixth instalment for the first time, together with their corresponding processed claims. All remaining rejected duplicate category "C" claims are included in this seventh instalment.

56. As noted in the Sixth Report, there were exceptions to the duplicate selection policy. [48] The most significant was that of 283 duplicate claims submitted by different submitting Governments or international organizations. [49] Thus, in accordance with the Panel's direction, the secretariat sent notifications of duplicate claim submissions to the 32 Governments or international organizations concerned requesting guidance in this respect. [50] Failing such guidance, the Panel directed the secretariat to select which claims should proceed in the processing cycle and which should be rejected as duplicates.

57. The Panel took note of all responses in selecting which of the duplicate claims should be considered as "valid" claims (e.g., selected for processing) and which should be rejected. To the extent that only one response was received in respect of a given claimant, the Panel's selection of the valid claim was determined in accordance with that response. When responses were received from two or more Governments or organizations in respect of the same claimant, the selection of the valid claim was determined by the specificity of the response for that claimant. For example, a response naming an individual claimant and forwarding specific instructions from that claimant or one asserting direct or attempted communication to ascertain the wishes of a given claimant was generally considered to have more weight than a response making global assertions but indicating no attempt to contact specific claimants. Further, as between a submitting Government and an international organization, the secretariat considered the valid claim to be that submitted by the Government, unless an individual claimant specified through the organization that the organization should be considered the official submitter of his or her

claim.[illegible] In this manner, all issues relating to duplicate claims submitted by different submitting entities have been resolved and the selected valid claims have been processed in this instalment in accordance with the Panel's criteria for the loss elements contained therein.

58. The Panel has also taken into account notifications that the secretariat has received from submitting Governments concerning duplicate claims that were not identified before being included in a report. In respect of such claims, the Panel has instructed the secretariat that the selection of the valid claim shall be determined as follows: (a) where duplicate claims have been reported in different instalments, the claim earlier reported shall be deemed to be the valid claim; and (b) where duplicate claims have been reported in the same instalment, the claim with (i) the higher lot number, or (ii) the higher claim number within the same lot shall be deemed to be the valid claim.[illegible] In either situation, the Panel has also instructed the secretariat that, should differences exist in total amounts awarded, the presumption should be that losses in the valid claim will be reconciled to the higher award. All corresponding duplicates should then be reported as rejected duplicates.

59. In a final effort to ensure that claimants have not been unfairly disadvantaged by the Panel's duplicate selection policy, the Panel has also instructed the secretariat to review all instances of duplicate claims where the valid claim was not awarded compensation in order to confirm that the rejected duplicate version contains no compensable loss elements. In cases where the rejected duplicate claim contains a compensable loss element, the Panel recommended that its corresponding valid claim be amended to include that element and that an award be calculated accordingly. Both this situation and that of the adjustment to awards when duplicates have already been reported will be the subject of article 41 corrections reports, following the completion of processing for all category "C" claims.

(b) Inter-category duplicate claims

(i) Duplicate recovery issues with category "A" claims

60. Decision 1 provides, in paragraph 11, that lump sum amounts of US$2,500 for individuals and US$5,000 for families will be provided for departure (category "A") claims where there is simple documentation of the fact and date of departure from Iraq or Kuwait. Decision 1 further provides, also in paragraph 11, that claims for such departure losses should not be resubmitted in other categories, but rather that claimants having losses greater than US$2,500 and that can be documented should submit those losses in other appropriate categories but not in category "A".

61. Decision 1 does not specify that claimants in category "A" may not submit claims for losses other than departure losses in other categories. However, the category "A" claim form included an option providing that a claimant could select higher lump-sum amounts (US$4,000 for an individual and US$8,000 for a family) providing that the claimant agreed not to submit claims under any other form or category. [53] However, in decision 21, the Governing Council provided that: (a) any claimant who has selected a higher amount under category "A" and who has also filed a category "B", "C" or "D" claim will be deemed to have selected the corresponding lower amount under category "A"; (b) those successful claimants whose category "A" individual claims are being so adjusted will receive an initial payment of US$2,500, but will not receive any additional payment under category "A"; and (c) those successful claimants whose category "A" family claims are being so adjusted will receive an initial payment of US$2,500, but will receive only an additional payment of US$2,500 under category "A".

62. For every instalment of category "C" claims, the secretariat has performed an electronic cross-check between categories "A" and "C", using a number of available identifiers, in order to exclude cross-category multiple recovery in categories "A" and "C". [54] Claimants who had submitted category "A" claims and who had also submitted claims for departure losses in category "C" had their recoveries manually adjusted for such in the first instalment. Claims of category "C" claimants with departure losses who matched category "A" claimants and that were identified during the first electronic processing cycle were removed from the processing cycle until the matches were confirmed. Following confirmation of the matches, the awards for departure losses in category "C" were reduced according to whether the claimants had submitted claims for individual or for family losses in category "A".

63. The adjusted award amounts in category "C" claims that were based on the cross-checks between categories "C" and "A" were reported for the first time in the Fourth Report. In all reports since the Fourth Report, in accordance with decision 21, category "C" claim awards have, where appropriate, reflected reductions for amounts already awarded in category "A".

(ii) Duplicate recovery issues with category "B" claims

64. The potential for multiple recovery between categories is also present in connection with claims for personal injury and death losses in categories "B" and "C". Decision 1 provides, in paragraph 12, that lump sum payments of US$2,500 will be provided for serious personal injury not resulting in death where there is simple documentation of the fact and date of the injury. It further provides, in the case of death, that a lump sum payment of US$2,500 will be provided where there is simple documentation of the death and family relationship. Also in the case of death, decision 1 provides, in paragraph 13, that a maximum lump sum amount of US$10,000 will

be paid for death in respect of any one family (consisting of any person and his or her spouse, children and parents).

65. Decision 1 further provides that if the actual loss in question was greater than US$2,500, payments in category "B" may be treated as interim relief. Decision 1 provides, in paragraph 12, that claims for additional amounts may be presented in category "C" and in other appropriate categories. Thus, claimants submitting claims for serious personal injury or for death in category "B" are specifically not precluded from submitting claims in category "C" even if they have received the maximum lump sum award amount in category "B". However, the Panel determined in its First Report that claimants who have claimed for the same costs or expenses in categories "B" and "C" should have any amounts paid under one category deducted from their compensation under the other.[55] Amounts awarded to claimants for serious personal injury or for death in category "B" and for which those claimants had the same category "C" losses were accordingly deducted from the category "C" claims in the first instalment.

66. Since the first instalment, no claims for serious personal injury or for death losses have been included among the claims reported. Therefore, until this seventh instalment, there have been no resulting deductions. In accordance with the Panel's decision in the first instalment, such deductions have been performed in this seventh instalment where, following cross-checks between categories "B" and "C", claims have been identified as claiming for expenses related to the same injury and death losses.

67. To conduct such cross-checks, electronic matching of personal injury claimants in categories "B" and "C" was performed. The electronic matching criteria developed for death losses were particularly complex because they required (a) matching of claimants to claimants, (b) matching of deceased persons to deceased persons and (c) matching of claimants to deceased persons. These cross-matching exercises have assisted both in preventing duplicate recovery for the same losses and in confirming results of claims for serious personal injury and death in category "C" in accordance with the results for the same losses in category "B". Additional issues concerning the cross-matching of claims in categories "B" and "C" are discussed in respect of the compensability of personal injury and death claims in section IV *infra*.

(iii) Duplicate recovery issues with category "D" claims

68. While decision 1 sets forth the criteria for expedited processing of urgent claims in categories "A", "B" and "C", decision 7 sets forth criteria for additional categories of claims.[56] The first of these additional categories is that of individuals not otherwise covered and whose losses exceed US$100,000 ("category 'D' claims").

69. The subject matter jurisdiction in category "D" is essentially the same as that for category "C". Decision 7 notes, at paragraph 7, that payments of compensation are available in respect of individuals who claim losses in excess of those compensable under claim forms "B" or "C" or who have chosen not to file under claim forms "A", "B" or "C" because their losses exceed US$100,000. Thus, the most obvious distinction between losses in categories "C" and "D" is that of the total amount claimed per individual claim.

70. A more substantive distinction deals with the requirement in category "D" that the evidence in support of the substantial amounts claimed in that category must be "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". [57] Additional distinctions include: (a) panels of Commissioners dealing, inter alia, with claims in excess of US$100,000 would be instructed to utilize different procedures appropriate to the character, amount and subject-matter of particular types of claims; (b) insofar as possible, claims with significant common legal or factual issues should be processed together; (c) unusually large or complex claims may be referred to panels for detailed review, possibly involving additional proceedings. [58]

71. While decision 1 provides that, for amounts in excess of US$100,000 per person, the first US$100,000 of losses should be presented in category "C" and the remainder separately, it does not specify that the mere fact of claiming for an amount in excess of US$100,000 is a jurisdictional bar to compensation if such a claim is presented in category "C". Thus, in its Sixth Report, after reviewing approximately 6,000 claims submitted in category "C" where the total losses claimed in each claim exceeded US$100,000, the Panel determined that where losses greater than US$100,000 were presented in category "C", only the first US$100,000 of such losses would receive expedited consideration. [59]

72. In reaching this determination, the Panel considered that the claims in question generally contained the most commonly requested category "C" losses: departure and relocation, MPA, personal property, motor vehicles, bank accounts, and salary losses. The Panel further noted the generally reducing effects of the fast-track methodologies used to resolve such losses in category "C" and the manual verification process for outlier amounts claimed and outlier amounts recommended which tended to reduce data error. [60]

73. The statistical regression models used in category "C" to resolve departure, relocation and personal property losses serve to recommend compensation not only as a function of the amounts claimed, but also according to the individual profiles of the claimants and the comparison of individual claimants to others in similar circumstances. [61] The criteria and formulas used to value MPA awards are based on Governing Council decisions 3 and 8. The formula used to value salary losses is based on a

standard multiplier of seven applied to the prior monthly salary stated by the claimants. [62] As such, the methodologies operate to ensure that amounts awarded in claims requesting high amounts for fast-track losses are not significantly disproportionate to amounts awarded to others in category "C". Finally, in all circumstances and in accordance with the category limitation set by the Governing Council, global awards per individual claim are limited to a maximum recovery of US$100,000.

74. Still, even with the limitation to a total award amount of US$100,000 in category "C", the potential for duplicate recovery between categories "C" and "D" is of great concern for the Panel. To date, the secretariat has conducted manual cross-checks and verifications of loss amount data between the two categories during the routine processing of category "D" claim instalments and exchanged information between categories in an attempt to minimize the potential for duplicate recovery. With the comparatively recent incorporation of all category "D" claims into the electronic database, additional and more sophisticated electronic cross-checks will continue to be conducted between the categories. It is the understanding of the "C" Panel that adjustment according to the circumstances will occur in connection with the corresponding losses in the category "D" claim, whenever it is ascertained by the "D" Panel that amounts that have been awarded to an individual in category "C" correspond to loss amounts claimed in category "D" by that same individual.

(iv) Duplicate recovery issues with category "E" and category "F" claims

75. Decision 7 not only sets forth criteria for the processing of category "D" claims but also for claims of corporations and other entities ("category 'E' claims") and for claims of Governments and international organizations ("category 'F' claims"). [63] While the potential for duplicate recovery is more subtle and not as directly ascertainable between individuals in category "C" and the corporations, Governments or international organizations who may have compensated them for the same losses they claim in their individual capacities, the Panel notes that it certainly does exist.

76. This duplicate recovery potential has most relevance when the corporation, Government or international organization is also claiming for losses that are essentially the same but viewed from another perspective, e.g., amounts paid by these entities to reimburse individuals for costs related to departure, relocation, personal property, real property or employment losses, in addition to relief, injury and death benefits. Detailed identification from these entities in respect of their individual employees is crucial for cross-category verification to work.

77. In a continuum with similar concerns expressed in the First Report, [64] the Panel therefore urges that all attempts reasonably possible be made to

minimize the risks of double recovery in connection with categories "E" and "F", including the development of such cross-category matching programmes as are appropriate, the reporting of all loss element calculations and compensation recommendations for relevant claims in category "C" to the appropriate panels, providing copies of claims and attached documents submitted in category "C" to the appropriate panels and making available to the appropriate panels all relevant valuation materials used.

(c) Multiple recovery due to compensation from non-Fund sources

78. In decision 13, [65] the Governing Council provided at paragraph 3(b) that amounts paid to claimants as compensation from other sources be deducted from the compensation to be paid from the Fund to that claimant for the same loss. The Governing Council accordingly invited claimant Governments and the Government of Iraq to provide the Commission with information about such payments or awards of compensation. When such information has been received, the secretariat has forwarded it to the Panel for consideration and the Panel has recommended adjustment to the claims involved, which has been implemented by the secretariat.

79. In all of its considerations, the Panel has noted that the clear intent of decision 13 is to avoid multiple recovery of compensation by claimants for the same losses. To that effect, the category "C" claim form requests that claimants declare whether and how much compensation they may have received in connection with the losses that they claim. Following the first instalment, in which all 2,873 claims were manually reviewed, information on compensation received was duly recorded in the category "C" database for more than 9,100 category "C" claims.

80. In its review of first instalment claims, the Panel recommended adjustment of individual awards where such was deemed to be necessary. At that time, the Panel considered communications from Governments explaining that certain payments either (a) had been deducted from individual claims prior to their submission to the Commission, or (b) were to be recouped from the claimant where duplicative. In such situations, Governments also represented that they would not seek reimbursement for such amounts in corresponding claims submitted by them for their own losses. The Panel found these measures reassuring but stressed that each Government would be expected to adhere to the measures suggested to ensure that claimants would not receive compensation from the Fund as well as from other sources. [66]

81. In its Sixth Report, in respect of the 9,100 claims with recorded amounts of compensation received, the Panel noted that up to 30 per cent of such entries had been made in error. In one sampling project where claimants declared receipt of small amounts of compensation, up to 97 per cent of those amounts could not be categorized to a loss element claimed by the claimants. The Panel also considered that, in the majority of such cases, the compensation received was in the form of relief or general

dislocation assistance payments from the claimants' Governments. Its considerations reflected that those Governments had represented that they would not seek reimbursement for such amounts from the Commission.

82. The Panel further noted that the observed effect of the methodologies used to process fast-track losses in category "C" had most generally been to reduce compensation awarded to category "C" claimants. It concluded generally that reducing awards further by declared amounts of compensation received that may actually have been attributable to (a) data error, or (b) an amount received that had already been factored into the amount claimed before submitting the claim to the Commission, or (c) an amount received for a loss not even claimed for before the Commission, could result in a disproportionate reduction of an already reduced award. [67]

83. In its sixth instalment considerations, however, the Panel was dealing only with claims containing fast-track losses. Further, even among such fast-track claimant groups, the Panel provided for a specific exception. That exception, in note 107 of the Sixth Report, concerned claimants from OECD countries who asserted compensation received in amounts of US$9,000 or more. [68] All claims so identified were reviewed manually. If amounts had not already been discounted or otherwise adjusted to reflect the amount of compensation received, amounts claimed for the corresponding losses were reduced accordingly. In some cases, this resulted in claims having net claimed amounts of zero and the claimants concerned will, in essence, have their claims rejected. Therefore, claims of nationals from OECD countries, where evidence has been produced showing receipt of US$9,000 or more, are included in this seventh instalment. Before being submitted to the Panel's processing methodologies, the amounts claimed were adjusted to reflect receipt of compensation from non-Fund sources.

IV. EVALUATION METHODOLOGIES AND COMPENSATION CRITERIA

A. Loss type "C1": damages arising from departure, inability to leave or return, decision not to return, hostage-taking or other illegal detention

1. Damages arising from departure, inability to leave or return or decision not to return ("C1-Money losses")

84. Decision 1, at paragraphs 14 and 18, provides that compensation payments are available for losses due to departure from, inability to leave or a decision not to return to Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 as a direct result of Iraq's invasion and occupation of Kuwait. These departure and relocation losses, including costs incurred for transportation, food, lodging, relocation expenses and similar costs, may be claimed on the "C1" page of the claim form.

(a) Experience of the first instalment

85. C1-Money losses constitute approximately 49,182 losses within the population of 420,000 category "C" claims. The Panel considered 773 such losses in claims submitted by 13 countries in its first instalment. In its review, the Panel concluded that C1-Money losses were the most diverse claims before it in terms of the factual bases underlying the claims, the amounts claimed and the items upon which the claims were based. [69] It observed, to the extent that a pattern was discernible in the claims reviewed, that claimants from the same country appeared to claim for similar items and amounts, perhaps reflecting similar involvement of their Governments in the preparation of their claims, their similar socio-economic characteristics and the fact that nationality was a critical factor in defining the departure and relocation experiences of individuals who fled Iraq and Kuwait.

(i) Evidence submitted in support of C1-Money losses

86. The most common forms of evidence submitted by claimants in support of their losses included copies of passports with visa and other stamps dated during the relevant period, tickets stubs, boarding passes, receipts, credit card statements, vouchers, invoices for airline, bus or ship tickets, travel itineraries, copies of airline, bus or ship passenger manifests, government or international organization record, certificate or letter, including emergency or temporary or substitute travel documents or identification papers issued by official Government authorities outside Iraq or Kuwait, along with personal or witness statements explaining the circumstances, dates and routes of their departures. The level, quality and type of evidence submitted was dictated by several factors, enumerated more fully in the First Report.

(ii) Processing methodology

87. Taking into consideration the numerous claims for this type of loss, the diversity of the claims presented, and the specific mandate of the Panel from the Governing Council to process urgent claims on an expedited basis, the Panel adopted a processing methodology for C1-Money losses in the first instalment that has not differed essentially throughout its subsequent instalments. The methodology entailed: (a) the grouping of claims presenting similar legal and factual issues; (b) the individualized review of sample claims from the relevant groupings; (c) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (d) the extrapolation of its findings in respect of sample claims to the non-sampled claims; and (e) additional verification of individual claims only when necessary.

(iii) Findings of the Panel in the first instalment

88. In its First Report, the Panel determined that, in order for losses relating to an inability to leave or return to Iraq or Kuwait or a decision not to return ("relocation losses") to be considered directly related to the Iraqi invasion and occupation of Kuwait, claimants must have established the fact of their residence in Iraq or Kuwait prior to the invasion. For departure-related losses, claimants must have established the fact of their departure from Iraq or Kuwait during the period from 2 August 1990 to 2 March 1991. The Panel further determined that C1-Money losses may be considered compensable only to the extent that they were temporary or extraordinary in nature.[70]

(iv) Valuation of C1-Money losses

89. In respect of valuation of compensable losses, the Panel also concluded that, while claimants had incurred C1-Money costs for which they were eligible to receive compensation, it was unable to value the losses suffered by the majority of the claimants and thus determine the amount of compensation awardable, solely on the basis of the valuation evidence submitted.[71] It was principally for this reason that the Panel decided that an average amount, calculated on the basis of the amounts claimed for C1-Money losses by all claimants in the first instalment, would be used to value nearly all C1-Money losses.[72]

(b) Refinement of the processing and valuation methodology since the first instalment

(i) Development of a statistical model using a data set representative of all category "C" claimants with C1-Money losses

90. Once data became available in respect of the category "C" claims population as a whole, rather than the first instalment experience alone, the Panel was able to reconfirm, and where appropriate, refine its evidentiary determinations and valuation methods. Thus, in its second instalment, with developmental assistance from statistical experts and based on a data-set consisting of 7,343 representative claims with C1-Money losses and based on standard statistical practice, the Panel concluded that a standard linear regression model should be used for the valuation of all C1-Money losses.[73] Thus, since the second instalment, claimants have been awarded the lower of the amount claimed or the amount calculated by the model for their C1-Money losses.

(ii) Additional findings of the Panel in respect of the relevant time period for C1-Money losses

91. The C1-Money losses included in the first to fifth instalments included claims where the dates of departure were indicated as occurring during the period from 2 August 1990 to 2 March 1991 ("the jurisdictional period"). However, approximately 10,500 claims for C1-Money losses had dates of departure indicated as occurring either before or after the jurisdictional period. The claims did not therefore appear to meet the basic jurisdictional time period requirement for compensation of C1-Money losses. Still, decision 1 provides, at paragraph 18, that losses caused by an inability to leave or return to Iraq or Kuwait or a decision not to return ("relocation costs") are compensable if they resulted from circumstances that occurred during the jurisdictional period and that were directly related to the invasion and occupation of Kuwait by Iraq. Therefore, sample reviews of claims with such C1-Money losses were conducted for large submissions, while all claims from smaller submissions were reviewed manually in order to determine whether these claims could be considered compensable.

92. The reviews confirmed that data entry error was not a factor in the entry of the dates. However, it was observed that while many claimants had indeed established their residence in Iraq or Kuwait prior to the invasion, they had departed from Iraq or Kuwait prior to the invasion, during the traditional summer vacation months of June and July 1990, and were most directly prevented from returning in August 1990 by the invasion and occupation. It was further observed that departures for claimants who departed after 2 March 1991 were not directly related to the invasion and occupation but rather to intervening circumstances, which did not rise to the level of the "special circumstances" required. [74] Given the results of the claim reviews, the Panel determined in the sixth instalment that (a) claims for C1-Money relocation costs could be compensable even when the claimants departed from Iraq or Kuwait prior to the invasion period, but, in no event earlier than 1 June 1990, so long as the claims contained either a Kuwaiti civil identification or an Iraqi residency permit number in the relevant field and (b) that no claims for C1-Money relocation costs without a Kuwaiti civil identification number or Iraqi residency permit and no claims for C1-Money departure costs were eligible for compensation when the dates of departure occurred after the jurisdictional period. [75]

(c) Recommendations for claims for C1-Money losses in the seventh instalment

93. This seventh instalment includes 16,239 claims that contain C1-Money losses. Of that number, 14,346 losses have been recommended for compensation and 1,893 have not been recommended for compensation. Throughout the category "C" claims programme, of a total number of 49,182

claims containing C1-Money losses, 40,779 claims have been recommended for compensation and 8,403 claims have not been recommended for compensation.

2. "C1-MPA" losses: claims for mental pain and anguish arising from hostage-taking, illegal detention or being forced to hide

94. Decisions 1, 3 and 8 together provide that a claimant may be compensated for MPA resulting from being taken hostage or illegally detained for more than three days, for a period of three days or less in circumstances indicating an imminent threat to the claimant's life, and for being forced to hide on account of a manifestly well-founded fear for his or her life, or of being taken hostage or illegally detained. Claims for MPA arising from such circumstances may be submitted on page "C1" of the category "C" claim form and are referred to as C1-MPA losses accordingly. The Panel's legal, factual and processing considerations, as well as the substantive criteria applied in respect of C1-MPA losses, were first enumerated in its First Report.[76]

95. Taken together, compensation for C1-MPA losses has been requested in approximately 139,706 category "C" claims within the population of 420,000. In its first instalment, the Panel considered a total of 595 such losses submitted by 11 countries. Taking into account the relatively small number of claims in that instalment, the Panel adopted a methodology involving the individual review of claims and of the attached documentation. In subsequent instalments, the Panel reviewed large numbers of claims on a sample basis, in accordance with criteria developed in the first instalment, as well as in accordance with certain characteristics exhibited by the claims and the claimant groups. The Panel's findings and conclusions, along with the results of the methodologies applied are summarized below.

(a) Claims for C1-MPA losses for hostage-taking or illegal detention for three days or less

(i) Findings of the Panel in the first instalment

96. In order to be compensated for being taken hostage for three days or less, claimants must establish that they were held hostage or illegally detained, and, in accordance with decision 3, that they were held in "circumstances indicating an imminent threat" to their lives. In its First Report, the Panel identified certain categories of claimants where circumstances indicating an imminent threat to the claimant's life may be presumed to be present. The Panel also indicated that the identified categories were not exclusive. The listed categories included: (a) claimants who were detained and used in Iraq's "human shield" programme; (b) claimants who indicated that they or a family member are a national of a country specified in relevant directives or orders issued by the Iraqi Revolutionary Command Council, or known to have been targets of actions by

officials, employees or agents of the Government of Iraq or its controlled entities; (c) claimants who were held hostage or detained at a location where detainees were tortured or where executions were carried out; and (d) claimants indicating that they, or a family member are a member of, or were connected to, the Kuwaiti royal family, armed forces, government, resistance movement, or police force, or that they were, or a family member was, a political figure or a high ranking official in the Kuwaiti Government, prior to or during the invasion and occupation of Kuwait, as the case may be.[77]

(ii) Findings of the Panel since the first instalment

97. Apart from the eight C1-MPA claims for hostage-taking or illegal detention for three days or less that were included in the first instalment, there were approximately 3,300 others identified as such in the database. In view of the comparatively small number of claims containing this loss type and the specific findings necessary, the Panel determined that claims from small submissions should be manually reviewed, with sampling to be conducted only where appropriate for larger submissions.

98. The manual review first determined that the overwhelming majority of such claims (84 per cent) had been erroneously categorized and should rather have been claims for forced hiding. The claims were reclassified accordingly. In some cases, the number of days was also amended to more than three, where circumstances clearly warranted such. Of the remaining C1-MPA claims for illegal detention for three days or less, most met the criteria for compensability enumerated in the First Report. Following the manual review, 263 claims in the sixth instalment were recommended to receive lump sum amounts of US$1,500 as C1-MPA compensation for hostage-taking or illegal detention for three days or less. However, 142 of the claims reviewed did not meet the Panel's criteria and were thus not recommended for compensation for this loss type.[78]

(iii) Recommendations for claims for C1-MPA for hostage-taking or illegal detention for three days or less included in the seventh instalment

99. This seventh instalment includes 338 claims for C1-MPA for hostage-taking or illegal detention for three days or less. The Panel recommends compensation of lump sum amounts of US$1,500 for 272 claims. It recommends no compensation for this loss element in 66 claims. In total, the Panel considered and resolved 1,352 claims for C1-MPA for hostage-taking or illegal detention for three days or less.

(b) Claims for C1-MPA for hostage-taking or illegal detention for more than three days

(i) Findings of the Panel in the first instalment

100. In order to receive compensation for C1-MPA for hostage-taking or illegal detention for more than three days, the Panel determined in its First Report that claimants must establish the fact of being held hostage or illegally detained and the number of days they were so held.[79] The Panel held that claimants may be considered to have established the fact of being held hostage or illegally detained if (a) information from a Government confirms that a claimant was held hostage or illegally detained, or (b) the claimant has alleged specific circumstances or events relevant to his detention or hostage-taking, or (c) sufficient information is available from the claim form, the attached documentation, submissions by Governments, or relevant external information to enable the Panel to ascertain the location from which the claimant was taken hostage or illegally detained, the date the claimant was taken hostage or illegally detained, the specific identity of the claimant's captors, or the date the claimant was released from captivity. The Panel found further that it should be apparent from the available evidence that the claimant was confined to a particular location or locations within Iraq or Kuwait as a result of acts or actions by officials, employees or agents of the Government of Iraq and its controlled entities, involving some form of force or coercion, or the threat thereof.[80]

(ii) Processing methodology

101. The formula specified in decision 8 for compensating claimants found to have been held hostage or illegally detained for more than three days is based on the number of days the claimant was held captive. Taking all factors into consideration, in particular the inherent difficulty of proving the actual number of days that the claimant may have been held captive, the Panel accepted the number of days asserted by the claimant in the claim form, to the extent that number was not contradicted by other available information.[81]

(iii) Findings of the Panel since the first instalment

102. In its Second Report, the Panel determined that, on the basis of results derived from statistical sampling methodologies that confirmed the Panel's original first instalment findings in respect of C1-MPA losses, that nationals of OECD countries, who were known to have been specifically targeted for hostage-taking, and who had submitted claims for C1-MPA for hostage-taking or illegal detention for more than three days should be compensated for these losses in accordance with the decision 8 formula.[82] After additional sampling projects, the Panel concluded in the Fifth Report that Kuwaiti nationals, who represented a large, homogeneous group of

claimants and who shared particular evidentiary and other relevant characteristics, and who had submitted claims for C1-MPA for hostage-taking or illegal detention for more than three days should also be compensated for such losses in accordance with the decision 8 formula. [83] The Panel concluded in its Sixth Report that claims submitted by Kuwait on behalf of other nationals and all claims submitted by Somali and Ethiopian nationals, who demonstrated the same evidentiary characteristics for this loss type as did Kuwaiti nationals, would also be compensated in accordance with the decision 8 formula, using the number of days stated by the claimants. [84]

103. In respect of approximately 4,400 other claims for C1-MPA for hostage-taking or illegal detention for more than three days that were submitted by claimants from countries other than Kuwait and OECD countries, the Panel determined, also in the Sixth Report, that results of sampling reviews had identified certain claimant groups as not being eligible for compensation for this loss type at all. [85] In respect of all other groups, the results were inconclusive and did not allow for general determinations either as to the fact of hostage-taking or illegal detention or as to the sufficiency of the evidence submitted in support of the claims. [86] However, bearing in mind the humanitarian considerations inherent in processing individual claims in category "C" and the specific provision in article 36(b) of the Rules for reliance on sampling techniques, the Panel determined in its sixth instalment that compensation for these C1-MPA losses should be awarded to those nationals of non-OECD countries for C1-MPA for hostage-taking or illegal detention when the date of departure did not occur after 2 March 1991. In view of the inconclusive sample results, the Panel determined that the number of days asserted by such claimants should be reduced by a weighted average percentage. [87] Using the reduced number of days, compensation for this loss type for this group of claimants has thereafter been calculated in accordance with the formula provided in decision 8.

(iv) Recommendations for claims for C1-MPA for hostage-taking or illegal detention for more than three days in the seventh instalment

104. In this seventh instalment, there are 2,967 claims that request compensation for C1-MPA for hostage-taking or illegal detention for more than three days and that represent all claimant groups submitting such losses. For 2,666 claims, compensation has been recommended, while for 66 others, no compensation has been recommended. Of a total of 9,986 claims submitted throughout the category "C" claims programme for this loss type, 9,278 claims have been recommended to receive compensation.

(c) Claims for C1-MPA for forced hiding

(i) Findings of the Panel in the first instalment

105. In order for persons claiming for C1-MPA for forced hiding to receive compensation, decision 3 provides that they must prove that they were forced to hide on account of "a manifestly well-founded fear for their lives or of being taken hostage or illegally detained". In its First Report, the Panel identified certain categories of persons who could be considered to have been forced to hide on account of the "manifestly well-founded fear" specified by decision 3. The Panel further determined that claimants falling within any of the categories specified in eight "forced hiding conditions" or demonstrating any of the characteristics so identified in their claim forms or attached documentation may be considered to have established that they were forced to hide on account of a manifestly well-founded fear for their lives or of being taken hostage. [88]

(ii) Findings of the Panel since the first instalment

106. In its Second Report, following sample reviews that confirmed its conclusions from the first instalment, the Panel determined that claims for C1-MPA for forced hiding that were submitted by Kuwaiti nationals and by nationals of OECD countries were compensable. [89] Compensation was to be based on the number of days stated on the claim form, to be calculated by application of the formula set out in decision 8.

107. The Panel addressed the issue of compensation for the nearly 10,000 claims for C1-MPA for forced hiding by nationals from countries other than Kuwait and OECD countries in its sixth instalment. After using, where appropriate, the same sampling methodology used to review the claims of nationals from Kuwait and OECD countries, [90] the Panel determined that circumstances in those claims for C1-MPA for forced hiding by nationals of other countries that were submitted by Kuwait and claims for nationals of Somalia and Ethiopia generally were similar to those of the groups of claimants sampled for C1-MPA for hostage-taking or illegal detention for more than three days. [91] The Panel therefore determined that those claims were compensable in accordance with the number of days stated by the claimant on the claim form, to be calculated by application of the formula set out in decision 8.

108. In respect of nationals from other non-OECD submitting countries, however, the Panel reached the same conclusion that it had with claims for C1-MPA for hostage-taking and illegal detention for more than three days. In its Sixth Report, the Panel determined that the results of the reviews were inconclusive and would thus not justify the formulation of general presumptions regarding either the fact of being forced to hide or the sufficiency or adequacy of the evidence submitted in support of claims for C1-MPA for forced hiding. Again, bearing in mind the humanitarian

considerations inherent in processing individual claims in category "C", in particular, that nationals from countries other than Kuwait and OECD countries were generally among the claimant groups who were most adversely affected economically by Iraq's invasion and occupation of Kuwait, the Panel relied on the specific provision of article 37(b) of the Rules that provides for sampling of individual claims with further verification to occur only as circumstances warrant. [92] The Panel therefore determined that all C1-MPA claims for forced hiding were compensable so long as the number of days stated was greater than three. However, in view of the generally inconclusive results of reviews conducted for nationals of countries other than Kuwait or OECD countries, the Panel also opted to reduce the number of days stated by the claimant by application of a weighted average percentage. [93] Using the reduced number of days as a basis, [94] compensation has been calculated in accordance with the formula set out in decision 8.

109. The Panel further determined that those claimants of any nationality who left Iraq or Kuwait before the onset of the invasion or who were not able to establish that they were in either country during the invasion period should not receive compensation for C1-MPA for forced hiding. Also, a manual review of all claims for C1-MPA for forced hiding where the number of days stated was three or less was conducted to confirm that the number of days had not been entered in error. In such cases, considering that decision 3 provides that only those claims for C1-MPA for forced hiding for more than three days may be compensated, the Panel also determined that claims for C1-MPA for forced hiding for three days or less are not compensable. [95]

(iii) Recommendations for claims for C1-MPA for forced hiding in the seventh instalment

110. There are 10,446 claims that request compensation for C1-MPA for forced hiding in this seventh instalment and that represent all claimant groups submitting such losses. In 10,016 claims, compensation has been recommended, while in 430 others, no compensation has been recommended. Of a total of 128,368 claims submitted throughout the category "C" claims programme for this loss type, 127,095 have been recommended to receive compensation.

(d) Confusion between "mental pain and anguish" submitted as "serious personal injury" in category "B" with C1-MPA losses

111. In respect of some 351 claims that were transferred from category "B" to category "C" by the Executive Secretary after the "B" Panel noted that the claims were not actually for "serious personal injury" or death but rather for mental pain and anguish for being illegally detained, forced to hide or taken hostage, [96] the Panel determined in the first instalment and again, in the sixth instalment, that such losses should be recategorized to their respective C1-MPA equivalents and compensated as MPA rather than

injury losses. Some were accordingly resolved as such in the first instalment. That resolution was approved by the Governing Council.[97] Therefore, once the Panel had resolved intra-category duplicate issues concerning certain transferred "B" claims in the sixth instalment, those claims were also recategorized to C1-MPA losses. All remaining transferred "B" losses have therefore been resolved in this seventh instalment, after having been recategorized as C1-MPA losses, most generally as C1-MPA for forced hiding for more than three days.

112. The issue of general confusion by claimants between injury and MPA losses, the precedent followed by the Panel in recategorizing losses submitted as injuries in category "B" to claims for C1-MPA losses and the Governing Council's approval of such, along with the Panel's findings in respect of all C1-MPA categories, also served as bases for several Panel decisions in respect of the resolution of certain groups of personal injury claims, as discussed more fully in paragraphs 138-140 infra.

B. Loss type "C2": damages arising from personal injury

113. Decision 1 of the Governing Council provides for the payment of up to US$100,000 in respect of "... personal injury ... or medical expenses ... as a result of Iraq's unlawful invasion and occupation of Kuwait". Using the "C2" page of the category "C" claim form, individuals have submitted claims for medical expenses incurred in connection with the claimant's personal injury, for MPA resulting from the serious personal injury of the claimant, or for witnessing the intentional infliction of events leading to the serious personal injury of the claimant's spouse, child or parent.

114. Claimants were requested to provide a brief summary of the cause and circumstances of the injury and a date of injury. Claimants selected among the appropriate injury categories: dismemberment; disfigurement; loss or limited use of body organs or systems; other injury requiring medical attention; sexual assault; torture; and aggravated physical assault. Claimants were also requested to submit appropriate documentation such as photocopies of medical or insurance records to denote the nature and extent of the injury.

1. C2 claims for medical expenses ("C2-Money" claims)

(a) Experience of the first instalment

115. In its first instalment, the Panel considered 74 claims for personal injury, submitted by eight countries. During its deliberations and as an aid to its decisions, the Panel considered the extensive documentation available in United Nations-sponsored reports and in submissions made by and prepared on behalf of various Governments.[98] Further, the Panel relied on conclusions reached by the "B" Panel in respect of the relevant time period, claimant eligibility, and the location of the loss.[99] In respect

of subject matter jurisdiction, however, the "B" Panel was specifically limited to lump sum compensation awards for "serious personal injury" [100] while decision 1 asserted that category "C" claimants could be compensated for medical expenses for other personal injuries requiring medical attention whether or not those injuries were considered serious personal injuries, so long as the expenses were documented. [101] Finally, the Panel relied on the information provided in the claims themselves, in particular, on the summaries provided by the claimants that explained the causes and the circumstances of their injuries. [102]

(i) Fact of injury

116. The Panel noted in its First Report that, as had happened earlier in category "B", most category "C" claimants faced evidentiary impediments in proving the fact of their injuries, having generally experienced circumstances that did not foster the procurement or retention of documentation that later could be used to substantiate their losses. Therefore, the Panel determined that a statement by the claimant, either provided on the claim form or as a separate document, constituted sufficient evidence of the fact of injury. The Panel further noted that a special standard should apply to C2 claimants who had established that they had been taken hostage or otherwise detained or in hiding (i.e., had valid claims for "C1-MPA" losses) and that the mere fact of completion of the C2 loss page alone in such cases could be viewed as sufficient proof of the fact of their injuries. [103]

(ii) Causal relationship to the Iraqi invasion and occupation

117. The principal causes of injury identified by the Panel included the following: [104] (a) military operations or actions; (b) torture, assault, maltreatment, oppression; (c) sexual assault; (d) lack of medical care; (e) accidents; (f) environmental health threats; and (g) the invasion and occupation in general. [105] The Panel considered that, consistent with the causation categories enumerated in decision 1, [106] and taking into account the data contained in the external reports, it was realistic to presume that injuries occurring during the period from 2 August 1990 to 2 March 1991 were likely to be attributable to Iraq's activities associated with the invasion and occupation of Kuwait. For certain types of injury, the Panel found that the presumption was not limited to the occupation period. Thus, even if injuries were incurred after the cessation of hostilities, injuries such as wounds caused by mine explosions, miscarriages, respiratory difficulties and mental problems could be attributable to Iraq. [107]

118. The Panel found further that, where the causal link with Iraq's actions was implied by the nature of the injury, such as gunshot or explosion wounds, there was no need for explicit evidence to that effect. In all other cases, the Panel determined that a statement by the claimant

mentioning or implying a causal link, whether provided on the claim form or separately, created a presumption that the injury was attributable to Iraq. This presumption, however, could be rebutted by information in the claim file.[108]

(b) Development of personal injury jurisprudence since the first instalment

119. Since the Panel's First Report in December 1994, the "B" Panel has concluded its deliberations, expressing its findings in four reports.[109] The "D" Panel has also issued a report in which its findings in respect of claims for personal injuries are discussed.[110] However, in view of the urgent nature of claims in both categories "B" and "C" and the expedited procedures applicable to category "C", the Panel considered, where feasible, that the jurisprudence of category "B" was more generally applicable to claims for personal injury losses in category "C".

120. Certain findings of the "B" Panel, adopted both prior to and after the first instalment of category "C" claims was approved, have therefore been considered in the development of jurisprudence and methodologies in respect of personal injuries in category "C". In addition to the general jurisdictional findings already noted in paragraphs 10-12 and 20 supra, these findings include, inter alia: (a) the recommendation that a person other than the claimant may exceptionally be eligible for compensation for a personal injury "when it is clear that other individuals, referred to in the documentation submitted, are claiming as well";[111] (b) claims submitted both for the death of a relative and for the serious personal injury suffered by the deceased prior to death were not eligible for compensation as personal injury claims;[112] (c) for purposes of compensation, claims for miscarriage, abortion or stillbirth were erroneously filed as death claims and were considered rather as serious personal injuries to the mother;[113] (d) certain claims that were transferred to category "C" because the "B" Panel had found that the claims were for "mental pain and anguish" only have been recategorized as C1-MPA losses and not as personal injuries;[114] (e) "irrespective of the words used on the claim form" in cases where claimants presented evidence proving the existence of a mental injury and its direct causation by the Iraqi invasion of Kuwait, the injury would be considered as a post traumatic stress disorder ("PTSD") and hence, a serious personal injury;[115] (f) trauma caused by being illegally detained, taken hostage, or being forced to hide could result in ongoing and debilitating physical disorders, particularly when individuals were particularly susceptible to such;[116] psycho-organic stress-related illnesses such as the dysfunction of internal organs, severe gastro-intestinal illnesses with substantial weight loss, chronic headaches or painful skin rashes (e.g., eczema) requiring a course of medical treatment and arising in connection with a claimant's being in hiding, or having been detained or held as a hostage fell within the definition of "serious personal injury";[117] (g) accidents involving Iraqi military vehicles were

considered to be direct consequences of the invasion and occupation; [118] (h) motor vehicle accidents occurring in the immediate aftermath of the invasion and immediately prior to the cessation of hostilities were a priori imputable to Iraqi authorities; [119] (i) heart attacks within six months of hostage-taking that were incurred by persons who had been held hostage could be considered to be directly related to the Iraqi invasion and occupation; [120] (j) a serious personal injury could be attributable to the lack of medical care, equipment or medicine only when it was "the consequence of an acute deterioration, or of a very severe exacerbation, of the health condition of a person and not just of an aggravation arising from the normal course and development of a preexisting illness or injury". [121]

(c) Findings of the Panel in the seventh instalment

(i) Determination of "serious personal injury"

121. In its consideration of personal injury losses for the seventh instalment, the Panel took note that difficulty in selecting the injury category upon which the claim was based was a phenomenon that was not limited to claimants in the first instalment. [122] In fact, it was observed that claimants from certain submitting entities, without submitting any evidence whatsoever, had consistently claimed for all C2 injury categories. The Panel once again noted the rationale underlying the correct classification of personal injuries: (a) only an injury corresponding to a serious personal injury as described in decision 3 is eligible for C2-MPA compensation; (b) ceiling amounts payable for C2-MPA depend on the nature of the injury suffered; (c) C2-MPA may be payable cumulatively; and (d) proper classification of an injury allows the application of evidentiary criteria that varies in accordance with the type of injury suffered. Accordingly, in its review of C2 personal injury losses, the Panel has recategorised injuries, where appropriate, based on information provided in the claim form and claim file.

a. Claims for C2 losses with corresponding category "B" claims for serious personal injury

122. The Panel's initial review of C2 personal injury losses concentrated first on those category "C" claimants who, after matching exercises had been implemented between the respective claims databases, were determined also to have submitted claims for serious personal injuries in category "B". Taking into account the "B" Panel's manual review of the individual circumstances of each loss, the extensive advice the "B" Panel received from medical and psychiatric experts in arriving at its conclusions, and the results of reviews in category "C" that had ascertained both that the underlying injuries were the same and that the preponderance of evidence in support of the losses had been submitted in category "B", the Panel determined, in instances of matching "B" and "C" claimants, that the "B"

Panel's determination would be considered dispositive of the outcome in category "C".

123. In such cases, the Panel concluded that, if the "B" Panel had approved the underlying injury, the C2 injury would automatically be presumed to be a "serious personal injury" for the same claimant in category "C". In cases where the "B" Panel had not considered that the injury was a "serious personal injury" in accordance with decision 3, the C2 loss would also be presumed not to be a "serious personal injury". This presumption could be rebutted by new evidence or facts not known to or considered by the "B" Panel that demonstrated that such a conclusion would be clearly erroneous in category "C". However, no such situations were discovered during the review of personal injury losses. Further, to the extent that the claimant had submitted documentation in support of medical expenses (C1-Money) for the injury, whether it was considered to be a "serious personal injury" or not, the claimant could be compensated. However, the Panel was quite concerned that, in all cases where compensation was awarded in category "B" for serious personal injury, any compensation calculated for C2-Money losses would be reduced by the amount awarded to the same claimant in category "B".

b. Claims for C2 losses without corresponding category "B" claims for serious personal injury

124. Due to the nature of C2 personal injury losses, the Panel had consistently considered them to be non-fast track losses requiring individual review. Thus, reviews of C2-Money and C2-MPA losses were generally conducted manually, particularly where an approved serious personal injury claim by the same claimant was not found in category "B". However, given that profiles of all category "C" claimants with C2 losses were now available in the database [121] and keeping in mind the urgent nature of claims in category "C", the provision in article 37(c) for the grouping and review of sample claims, and the results of the matching and comparison of category "B" claims with their corresponding C2 injuries, the Panel determined that certain groupings could be made in an attempt to facilitate the reviews of the approximately 7,427 claims for C2-Money and C2-MPA losses.

125. Such groupings occurred first in accordance with the jurisdictional time period. Claims with dates of injury indicated before 2 August 1990 or after 2 March 1991 were reviewed for error in entry of dates. The Panel determined that injuries stated as occurring prior to 2 August 1990 were not generally imputable to Iraqi causes unless claimants could allege and provide specific evidence of circumstances after 2 August 1990 that exacerbated an existing injury and that were caused by Iraq's invasion and occupation of Kuwait. Further, as had been observed in the results of the review of claims for C1-MPA for hostage-taking or illegal detention, injuries occurring after 2 March 1991 for certain claimant groups were

highly suspect because the events in those cases were most often not imputable to Iraq. However, for all claimant groups, certain exceptional circumstances after 2 March 1991 warranted recovery of compensation for injuries and compensation has been recommended accordingly.

126. In connection with claims for personal injury where no date of injury was provided, the Panel determined that a review of the claims should be conducted to ascertain whether dates had inadvertently been omitted from the claim forms. Failing inadvertent omission of dates that existed elsewhere in the claim file, the Panel determined that claims for C2 losses were not eligible for compensation (a) where no date of injury was provided and (b) where no description of the circumstances was provided. The Panel further determined that where no date of injury was provided but where there was a description of the circumstances that could lead to an inference of a causal link with the Iraqi invasion and occupation of Kuwait, the losses could be compensable. [124] However, depending on the nature of the circumstances described, the claims could properly be reclassifiable to C1-MPA losses where such did not already exist. [125] Further, the Panel made several general determinations in respect of the nature of the injuries claimed for and other reclassifications that should be made as described more fully below.

i. "Temporary" or "permanent" nature of the injury

127. The Panel determined that when the temporary or permanent nature of the injury was neither clearly specified by the claimant nor apparent from the explanation and evidence submitted in support of the claim, the injury would be considered to be temporary.

ii. "Torture" versus "aggravated physical assault"

128. In situations where the claimants had not clearly established a situation of being held hostage or illegally detained and had not otherwise provided specific details of the "torture" alleged, the injury would be reclassified to "aggravated physical assault". [126]

iii. "Sexual assault" versus "indecent assault"

129. In approximately 180 claims, claimants alleged that they had been sexually assaulted by Iraqis or their agents. All claims were manually reviewed for the individual circumstances. The Panel considered that the circumstances described by some claimants were more properly for the offense of "indecent assault". [127] While the Panel determined that such injuries should be reclassified to "other injury requiring medical attention" rather than to "sexual assault", it also concluded that they should continue to be considered as serious personal injuries for purposes of C2-MPA awards. [128]

iv. Medical expenses in connection with routine hospital stays in other countries

130. After considering the results of several claim reviews, the Panel approved in principle the payment of compensation for reasonable medical expenses in connection with routine hospital stays, e.g., for maternity stays or operations previously scheduled to take place in Kuwait or Iraq during the invasion period, so long as the expenses were incurred in other countries during the period of the invasion and occupation of Kuwait. The Panel considered that the expenses could be compensable to the extent that they would not otherwise have been incurred by the claimants because public health facilities in Iraq or Kuwait would have provided such services free of charge.

c. Valuation of C2-Money losses

131. Having implemented decisions generally applicable to the compensability of claims for C2-Money losses submitted by the population of C2 personal injury claimants, and considering the results of those decisions as applied in the review of all C2 claims, the Panel concluded that a manual verification and valuation of medical expenses was not feasible, considering the circumstances and nature of processing in category "C". The Panel therefore requested that the secretariat solicit advice from external consultants to propose a method for the calculation of amounts related to reasonable medical expenses that would be incurred, depending on the injury or injuries suffered by the claimants. [129]

132. After considerable research on compensation practice in respect of injuries throughout the Middle East, the consultants proposed, as a point of departure, that the C2-Money methodology be based on a "Dollar Compensation Unit" multiplied by a composite ratio derived from the type of injury, age group and nationality. [130] Based on more detailed reviews of the claims, the Panel determined that the nationality groups be composed generally of three groups: (a) Kuwaiti nationals; (b) nationals of OECD countries; and (c) all other nationalities. In its determination, the Panel took into account the claimant populations, their characteristics as represented in category "C" claims and existing Panel practice in consideration of analogous C1-MPA groups. The Panel also included gender as a factor in the composite ratio. [131]

133. Thus, the compensation methodology approved by the Panel and used to value claims that met criteria for C2-Money compensation was based on a lump sum amount of US$2,500 multiplied by a composite ratio based on: gender, submitting entity (i.e, Kuwait, OECD countries, or all other countries) and age. [132] The methodology was applied electronically to all C2-Money claims. Amounts calculated in this way were compared to the amounts claimed by claimants for C2-Money losses. Claimants were awarded the lower of the calculated figure or the claimed amount. Further, if

claimants had already been awarded compensation in category "B", the C2-Money award was reduced by the amount of compensation awarded in category "B".

d. Recommendations for C2-Money claims in the seventh instalment

134. In accordance with decisions enumerated in this report, the Panel has considered approximately 3,000 claims for C2-Money losses in this seventh instalment. The Panel has recommended compensation in 2,203 claims and has not recommended compensation in 797 others. In all, the category "C" claims program has resolved a total of 3,074 claims for C2-Money losses, awarding compensation for 2,277 claims and none for 797 claims.

2. C2 claims for mental pain and anguish ("C2-MPA" claims)

(a) Findings of the Panel in the first instalment

135. Taken together, decisions 3 and 8 provide the categories of losses for which MPA compensation is awardable, along with ceiling amounts for the various categories. The Governing Council has set limits for the types of serious personal injury on the C2 loss page that are also eligible to receive such compensation.[133] However, C2-MPA may be awarded (a) for serious personal injury to the claimant or (b) for witnessing serious personal injury to a family member. Decision 8 further provides that compensation for MPA is payable cumulatively if the claimant has suffered multiple cases of injury, subject to an individual ceiling of US$30,000 and a family ceiling of US$60,000.

(i) Findings of the Panel in respect of C2-MPA for serious personal injury to the claimant

136. In the first instalment, the Panel determined that once the fact of injury had been proven, the presence of MPA could reasonably be assumed.[134] In order to assist in its determination of C2-MPA awards in the first instalment, the Panel relied on a report prepared by a panel of experts representing relevant disciplines such as psychiatry, psychology, and general, war and disaster medicine.[135] The MPA Report provides a number of relevant considerations, culminating in a list of differentiating criteria, known as "modifying factors" which allow MPA compensation to be adjusted in accordance with certain readily observable and objective standards that are intended to reflect different degrees of MPA suffered by claimants. Therefore, the Panel reached its recommendations for C2-MPA for injury to the claimant on the basis of the relevant modifying factors. The Panel noted, however, that implementation of certain recommendations in the MPA Report might be incompatible with the ceiling amounts established by the Governing Council. The Panel also recommended compensation of US$7,500 for cases of aggravated physical assault, in the absence of applicable

modifying factors entitling a claimant to the ceiling amount. Finally, it considered that modifying factors should be applied, where relevant, both to permanent and to temporary injuries, and that US$2,500 was an appropriate minimum lump-sum amount resulting from an injury of a temporary nature. [136]

(ii) Findings of the Panel in respect of C2-MPA for witnessing the intentional infliction of serious personal injury on a parent, child or spouse

137. In connection with this loss element, the Panel determined that claimants in the first instalment generally provided proof of an eligible family relationship and, to a limited extent, the circumstances of the witnessing claim. The Panel further determined that the requirement of intentionality could be inferred from the particulars of each case and the nature of the injury suffered, particularly injuries resulting from sexual assault, torture, and aggravated physical assault. [137]

(b) Findings of the Panel in respect of claims for C2-MPA included in the seventh instalment

138. In determining amounts to be awarded to claimants for C2-MPA losses, the Panel considered that eligibility for C2-MPA awards required the prerequisite finding of at least one serious personal injury as defined in decision 3. This eligibility threshold was presumptively met in the case of a corresponding approved claim for serious personal injury in category "B". The Panel further determined that claims for C2-MPA alone, without an underlying serious personal injury were not compensable. After studying the claimant MPA profiles as extracted from the database, [138] the Panel adapted the modifying factors used in the assessment of C2-MPA compensation to the requirements of mass claims processing by utilizing electronic indicators and descriptions provided by the claimants to determine incremental increases over base C2-MPA amounts of US$2,500.

139. One issue in connection with claims for witnessing injury that was noted during the extensive reviews conducted for these losses was that several claimants had erroneously claimed for witnessing their own injuries. The Panel has rejected all such claims. Further, when claimants requested compensation for witnessing injury to an eligible family member, but did not specify the injury witnessed in such fashion as the Panel could determine either what the injury was or whether it was a serious personal injury, the Panel did not recommend an award for C2-MPA for witnessing injury to a family member.

140. The Panel ascertained that, in many situations, claimants for C2 losses intended to claim only for MPA. Therefore, where C2 injuries did not meet the definition of serious personal injuries and there were no medical expenses claimed but where the claimant groups were particularly

vulnerable and could be presumed to have suffered due to Iraq's invasion and occupation of Kuwait, the Panel determined that if claims for C1-MPA for forced hiding did not already exist and there was no contradictory evidence in the claim forms, [139] the C2 claims could be reclassified to C1-MPA for forced hiding for four days. In this manner, some claimants were able to recover minimum lump sum amounts of US$1,550 as C1-MPA. However, the Panel did not recommend compensation for C2-MPA losses in any of these situations.

(c) Recommendations for claims for C2-MPA included in the seventh instalment

141. The 5,017 claims for C2-MPA that were not recategorised to C1-MPA losses are included in this seventh instalment. The Panel has recommended compensation in 2,557 cases for C2-MPA resulting from injury to the claimant and in 410 cases for C2-MPA resulting from the witnessing the intentional infliction of injury to a spouse, child or parent. In total, the Panel has considered and resolved 5,091 claims for C2-MPA.

C. Loss type "C3": damages arising from the death of the claimant's spouse, child or parent

142. In decision 1, the Governing Council provides for the payment of up to US$100,000 in respect of "... death ... or losses of income, support ... or medical expenses" as a result of Iraq's invasion and occupation of Kuwait. However, decision 1, paragraph 10, limits claims for death to those for the death of a spouse, child or parent. Using the "C3" page of the claim form, claimants may submit claims for medical, burial and other expenses and for the loss of support resulting from the death of their spouse, child or parent. Claimants may also submit claims for MPA for the death of a spouse, child or parent as a result of Iraq's invasion and occupation of Kuwait, either for witnessing the intentional infliction of events leading to that death, or resulting from the fact of death as such.

143. The "C3" page of the claim form requires that the claimant identify the deceased fully, indicate the claimant's relationship to the deceased, specify the circumstances of the death, provide the date of death and attach appropriate documentation in support of the fact of death and of the claimant's relationship to the deceased person. It further requests, *inter alia*, that the claimant indicate the amounts claimed for loss of support and for medical, burial and other expenses and whether the claimant is claiming for MPA for the fact of death or for witnessing the intentional infliction of events leading to that death.

1. Claims for C3 death losses for pecuniary amounts ("C3-Money" losses)

(a) Experience of the first instalment

144. In the first instalment, the Panel considered 14 claims for death losses, submitted by five countries. As with its deliberations in connection with claims for C2 personal injury losses, the Panel considered the extensive external documentation available concerning deaths during Iraq's invasion and occupation of Kuwait, solicited advice from medical and psychiatric experts, and relied on conclusions reached by the "B" Panel in respect of the subject matter jurisdiction, relevant time period, claimant eligibility and location of the loss. Finally, the Panel relied on the information provided in the claims themselves because the limited number of claims in the first instalment had enabled a more detailed review of evidence. At the same time, the Panel noted that (a) the extent to which the principles and procedures developed in the first instalment would need to be further developed would depend on the characteristics of future instalments of C3 death claims and (b) the criteria developed were intended to lend themselves to the processing of C3 death claims on a standardized basis. [140]

(i) Fact of death

145. The Panel noted that claimants for C3 death losses faced the same evidentiary impediments as had claimants for C2 personal injury losses. Still, it found that all claims in the first instalment were supported by death or burial certificates or by other documentation issued by an official authority confirming the fact of death. It concurred with the "B" Panel in regarding such evidence as sufficient proof of the fact of death. However, considering the conditions under which persons had died, the Panel expected future instalments to include a number of claims that would be accompanied by evidence of a lesser quality than that which characterized claims in the first instalment. In such cases, the Panel anticipated that appropriate evidentiary standards would need to be developed. [141]

(ii) Causal relationship to the Iraqi invasion and occupation

146. The principal causes of death identified by the Panel included the following: (a) military operations or actions; (b) execution, torture, assault, mistreatment, oppression; (c) lack of medical care; and (d) accidents. [142] The Panel concluded, however, that it was necessary to verify, in each individual case, the presence of a causal relationship with the invasion. As with claims for C2 personal injury losses, the Panel determined that the period between 2 August 1990 and 2 March 1991 was of primary importance in determining causation. Thus, consistent with the causation categories enumerated in decision 1, and taking into account the data contained in the external reports, [143] the Panel considered it realistic to presume that a substantial number of the deaths occurring in

Iraq or Kuwait during this period were likely to be attributable to Iraq's activities associated with the invasion and occupation. For certain instances of death, the Panel concluded that the presumption was not limited to the invasion period. Thus, even if they have occurred after the cessation of hostilities, deaths resulting from causes such as mine explosions may be attributable to Iraq. [144]

147. The Panel found further that, where the causal link with Iraq's actions was implied by the nature of the death, such as torture or execution, the Panel had no need for explicit evidence to that effect. In all other cases, the Panel determined that a statement by the claimant mentioning or implying such causal link, whether provided on the claim form or separately, created a presumption that the death could be attributable to Iraq. However, this presumption was rebuttable on the basis of information in the file. Therefore, the Panel considered the cause of death as stated in the medical certificate or as explained in other documentation to be most significant in this respect. [145]

(b) Development of death loss jurisprudence since the first instalment

148. Since the Panel's First Report in December 1994, the "B" Panel has concluded its deliberations and issued its findings in four reports. [146] The "D" Panel has also issued a report in which certain findings in respect of claims for deaths are discussed, along with a valuation methodology for D3 support losses. [147] As in its consideration of C2 personal injury claims, the Panel considered the jurisprudence of the "B" Panel, where feasible, to be more generally applicable to claims for C3 death losses.

149. Therefore, certain findings of the "B" Panel, adopted both prior to and following the first instalment of category "C" claims, have therefore been considered in the development of jurisprudence and methodologies in respect of C3 death losses. In addition to general jurisdictional findings already noted, these findings include, *inter alia*: (a) deaths from heart attacks occurring within a few days of witnessing events leading to the death of a spouse, child or parent may be considered to be related to the Iraqi invasion and occupation; [148] (b) deaths from heart attacks occurring within six months of being held hostage or illegally detained may be attributable to Iraq; [149] (c) deaths caused by those other than Iraqi authorities may not be recommended for payment of compensation from the Compensation Fund; [150] and (d) claims for death losses made by ineligible family members on behalf of a potential claimant who died before submitting a claim for such may not be compensated. [151]

(c) Findings of the Panel in the seventh instalment

(i) Determination of compensable claims for C3 death losses

150. In its first instalment review of 14 claims for C3 death losses, the Panel was able to evaluate the individual circumstances of each case accordingly. However, prior to the commencement of its review of the seventh instalment, the Panel took note that the database contained approximately 3,000 claims for C3 death losses. In an effort to expedite the verification of these losses, the Panel therefore adopted a review strategy that would (a) benefit from the manual review, expert advice received by and conclusions of the "B" Panel, and (b) extrapolate presumptions derived from the conclusions of the "B" Panel to the remaining "C" claimant population, insofar as possible.

a. Claims for C3 losses with corresponding category "B" claims for the death of a spouse, child or parent

151. Just as the Panel's initial review of C2 personal injury losses concentrated first on those category "C" claimants who, after matching exercises had been implemented between the respective claims databases, were found to have also submitted claims for serious personal injuries in category "B", the Panel adopted the same preliminary sorting methodology for claims for C3 death losses. Taking into account the "B" Panel's manual review of the individual circumstances of each loss, the extensive advice the "B" Panel had received from medical and psychiatric experts in arriving at its conclusions, and the results of preliminary reviews in category "C" that had ascertained both (a) that the deceased persons were the same, and (b) that the preponderance of evidence in support of the losses had been submitted in category "B", the Panel determined, in instances of matching "B" and "C" claimants, that the "B" Panel's determination would be considered dispositive of the outcome in category "C".

152. In such cases, the Panel concluded that, if the "B" Panel had approved a death claim for the same deceased person for one claimant, the C3 death loss would automatically be presumed to be eligible for compensation for the same claimant in category "C", less the amount awarded in category "B". Further, if the "B" Panel had approved that the circumstances of a given deceased person's death warranted compensation, the Panel determined that all eligible claimants in category "C" who had submitted claims for C3 death losses for the death of that same deceased person could receive compensation.

153. In cases where the "B" Panel had considered that the death was not compensable, any C3 death losses submitted on behalf of the same deceased person would also not be considered to be compensable. However, this presumption could be rebutted by new evidence or facts not known to or considered by the "B" Panel that demonstrated that such a conclusion would

be clearly erroneous in category "C". However, no such situations were discovered during the review of death losses.

154. In all cases where the "B" Panel had recommended compensation to the same claimant for the death of the same deceased person, however, the Panel was quite concerned that any compensation calculated for C3-Money losses would be reduced by the amount awarded to the same claimant in category "B". Thus, the valuation methodologies discussed at paragraphs 159-171 infra, take that concern into account.

b. Claims for C3 losses without corresponding category "B" claims for the death of a spouse, child or parent

155. Because the Panel considered claims for C3 death losses to be non-fast-track claims, reviews of C3-Money and C3-MPA claims were generally conducted manually, particularly when there were no matching approved death claims found in category "B". However, given that profiles of all category "C" claimants with C3 losses were now available in the database [152] and keeping in mind the urgent nature of claims in category "C", the provision in article 37(c) for the grouping and review of sample claims, and the results of the matching and comparison of category "B" claims with their corresponding C3 death losses, the Panel determined that certain groupings could be made in an attempt to facilitate the reviews of claims for C3-Money and C3-MPA losses.

156. As with personal injury losses, the groupings for the review of death losses occurred first in accordance with the jurisdictional time period. Claims with dates of death indicated before 2 August 1990 or after 2 March 1991 were reviewed for error in entry of dates. The Panel determined that deaths occurring prior to 2 August 1990 were not imputable to Iraqi causes. Further, as had been observed in the results of reviews of claims for C1-MPA for hostage-taking or illegal detention and C2 personal injury losses occurring after 2 March 1991, deaths occurring after 2 March 1991 for certain claimant groups were highly suspect because the deaths were most often not imputable to Iraq. However, for all claimant groups, certain exceptional circumstances, such as mine explosions or consequences of illegal detention or torture during the invasion, that occurred after 2 March 1991 could warrant recovery of compensation for death losses. The Panel has recommended compensation accordingly in individual cases.

157. In connection with claims for C3 death losses where no date of death was provided, the Panel determined that review of the claims should be conducted to ascertain whether dates had inadvertently been omitted from the claim forms. The Panel determined that claims for C3 death losses were not eligible for compensation (a) where no date of death was provided and (b) where no description of the circumstances was provided. Thus, the claims generally determined by the Panel to be compensable as C3 death losses are those claims submitted by eligible claimants, that state a date

of death and where the deceased person died (a) during the jurisdictional period of 2 August 1990 to 2 March 1991 and directly as a result of Iraq's invasion and occupation of Kuwait, or (b) after 2 March 1991, in specific circumstances, such as those resulting from mine explosions, that were directly attributable to the Iraqi invasion and occupation of Kuwait.

c. Erroneously submitted C3 death losses

158. During its review of claims for C3 death losses, the Panel determined that a number of claimants had erroneously submitted claims for C6 support losses as C3 death losses. This occurred in situations where the death had pre-dated the invasion but the payment of death benefits to the claimant in respect of the deceased was disrupted by Iraq's invasion and occupation of Kuwait. Similar situations occurred when claimants submitted claims on behalf of deceased persons whose dates of death followed Iraq's invasion and occupation of Kuwait but who had incurred salary losses during the invasion.[153] For both types of situations, the Panel determined that the claims were not compensable as C3 support losses, but could be compensable as lost support on the C6 page, should the claimants meet all other criteria for compensability. Therefore, the Panel determined, where appropriate, that such losses should be recategorized as C6 support losses ("C6-Support") and valued in accordance with the C6-Support methodology as described at paragraph 290 infra.

(ii) Valuation of compensation for C3-Money losses

159. Once having determined which claims for C3 death losses were compensable, the Panel turned its attention to the types of C3-Money losses for which valuation was necessary. The first loss concerned claims for C3 loss of support from a deceased spouse, child or parent ("C3-Support") and the second concerned claims for reimbursement of medical, burial and other expenses ("C3-Other").[154]

a. Valuation of C3-Support losses

160. The methodology used by the Panel to value C3-Support losses in the first instalment is described in the First Report, at pages 125 and 126. That methodology reflected consideration of many actuarial and financial principles. However, considering that many of the claimants in category "C" also submitted claims in category "D", that the claims in both categories generally contain the same documentation in support of the C3 losses claimed, that the deliberations of the "D" Panel included recourse to actuarial expertise, and that consistency in valuation was desirable, the Panel chose to modify the methodology applied in its first instalment and adopt the approach and calculation methodology utilized by the "D" Panel for its valuation of D3-Support losses.[155] This methodology takes into account the personal circumstances pertaining both to the deceased persons and to the claimants, and is similar both in that respect and in

its reliance on a formulation of the present value of the income that the deceased person would have been expected to receive in the future, to the valuation methodology adopted by the Panel in its first instalment. However, the "D" Panel divided its population of deceased persons into two groups: (a) those who were gainfully employed prior to 2 August 1990 and for whom evidence of earnings for the twelve months prior to that date was provided; and (b) those who were not gainfully employed and to whom no income could therefore be attributed. [156]

i. Calculated C3-Support amounts

161. In respect of those deceased persons who had been gainfully employed prior to 2 August 1990 and for whom claimants had stated monthly earnings or for whom monthly earnings could be derived from annual earnings figures provided, [157] the "C" Panel considered the same actuarial principles as had the "D" Panel [158] and adopted the "D" Panel's calculation methodology. [159] The "D" Panel methodology divides claimants into three nationality groups and thus takes into account differences in the economic factors relevant in determining life expectancy tables to be applied in respect of the deceased person, as well as the discount rate for purposes of calculating the present value of the deceased person's future stream of income. [160]

162. Compensation is payable to the claimants in the form of a capital sum, actuarially equivalent to the presumed amount of financial support that the deceased person would have been expected to provide throughout his expected lifetime. The assumption is that the capital sum being available initially and invested to earn a compound interest rate (i) for (n) years would ensure payment of an annuity of 1 for (n) years. The capital sum is discounted to arrive at the present value of the annuity. Thus, the crucial factor in deciding the amount to be awarded is the discount rate to be applied. [161]

163. In its selection of discount rates to be applicable, the "D" Panel considered discount rates in the context of the economic conditions and financial market experience of the country of origin of the deceased person. Therefore, taking into account the economic conditions pertaining to the return on investment [162] and inflation [163] in the submitting countries as grouped by the actuaries, the "D" Panel selected discount rates as follows. Claimants from Group 1 should have a discount rate of five per cent per annum applied to determine the amount of compensation to be paid, while claimants from Groups 2 and 3 should have a discount rate of three per cent per annum applied. [164]

164. The "D" Panel considered further, in respect of the calculation of compensation for loss of support claims where the deceased was earning an income, the assumption that the yearly income of any individual is not used entirely to provide support to the family unit. Part of the income is used for personal consumption and for living expenses. Therefore, the "D" Panel

concluded that the loss of support suffered by the claimants should be assessed by deducting a certain percentage from the capital sum representing the deceased person's future income, reduced to its present value. The "D" Panel thereafter found the proposals made by the actuaries, that the percentage deduction should be 40 per cent where there is one dependent and 25 per cent, where there is more than one dependent to be reasonable and adopted them for purposes of determining the final amounts to be awarded to claimants. The expectation was that the total amount should be shared among all the eligible surviving dependents. [165]

165. The "C" Panel considered all of the proposals and recommendations adopted by the "D" Panel and adopted the same methodology for the valuation of C3-Support losses where the deceased was earning an income. Using the same series of calculations adopted by the "D" Panel for determining the amounts to be awarded, the "C" Panel developed a programmatic solution that was applied to all such claims for C3-Support that otherwise met the Panel's criteria for compensability. However, because several eligible claimants in category "C" have often claimed for the death of the same deceased person, the Panel determined that the total amount calculated for C3-Support losses should be apportioned equally among each eligible claimant who had submitted an individual claim in category "C" for support from the same deceased person. Given the nature of this mass claims programme, the Panel has determined that it would be impractical for the Panel to attempt to administer proportional compensation payments for support losses pursuant to the municipal laws of 93 claimant countries. Because all claims submitted in category "C" are also subject to the US$100,000 category limitation, [166] and because support losses are being claimed in category "D" in respect of the same deceased person, the Panel wished, insofar as possible, neither to disadvantage nor to preempt recovery for eligible persons in category "D".

166. To enable consideration of claimants in category "D" who may not have presented individual claims for support losses from a deceased person in category "C" in the apportionment of the total support amount, preliminary matching of claims in both category "C" and category "D" has taken place. Further, information relating to the deceased persons has been rendered consistent so as to mitigate issues of duplicate recovery between the two categories. The Panel reiterated that its specific intent was neither to disadvantage nor to preempt recovery for claimants in category "D" who may not have been discovered during these matching exercises and who may not have submitted individual claims in category "C". Therefore, the "C" Panel took official notice that, should additional eligible dependents be discovered only in category "D" who (a) are claiming for support from deceased persons for whom other claimants have submitted individual claims in category "C", and (b) may not have been considered in the apportionment of support amounts among all known eligible individual claimants in accordance with the "C" Panel's decision, adjustments may accordingly be made to awards of claimants in category "C" in accordance with the article

41 correction procedure. This caveat is noted so that eligible persons in category "D" [167] may not be disadvantaged for recovery of compensation for this loss by prior actions and decisions in category "C".

ii. Lump sum C3-Support amounts

167. For claims for C3-Support where the deceased persons had no prior income, the "C" Panel adopted generally the conclusions of the "D" Panel, inter alia: (a) the unpaid contribution of a wife and mother to the welfare of the family has a financial value which is recognized in both international and municipal law; [168] and (b) the family is an economic unit in which each member makes a contribution. Therefore, the "D Panel approved the payment of lump sum award amounts, with the amounts varying according to the relationship of the claimant to the deceased. In its first report, the "D" Panel provided a chart listing the lump sum amounts recommended. [169] Taking into consideration the "D" Panel's findings, the "C" Panel has also implemented this lump sum approach in cases where deceased persons for whom lost support was claimed were not presumably earning an income prior to 2 August 1990. The "C" Panel has approved the payment of the same lump sum award amounts to eligible claimants as did the "D" Panel. [170]

168. As was the case with the calculated C3-Support amount, because several eligible claimants in category "C" have claimed for the death of the same deceased person, the Panel determined that the total lump sum amount awardable in respect of each deceased person should be apportioned equally among each eligible claimant in category "C" who had submitted an individual claim for support from the same deceased to the Commission. Given the nature of this mass claims programme, the Panel has determined that it would be impractical for the Panel to attempt to administer proportional compensation payments for support losses pursuant to the municipal laws of 93 claimant countries. Once again, all awards are also subject to the category limitation of US$100,000.

169. The Panel notes once again that its specific intent was neither to disadvantage nor to preempt recovery for claimants in category "D" who may not have been discovered during inter-category matching exercises and who may not have submitted claims in category "C". Thus, the "C" Panel again took official notice that, should additional eligible dependents be discovered in category "D" who are claiming for support from deceased persons for whom other claimants have submitted individual claims in category "C", and (b) may not have been considered in the apportionment of support amounts among all known eligible individual claimants in accordance with the "C" Panel's decision, adjustments may accordingly be made to awards of claimants in category "C" in accordance with the article 41 correction procedure. This caveat is noted so that eligible persons in category "D" [171] may not be disadvantaged for recovery of compensation for this loss because of prior actions and decisions in category "C".

b. Valuation of C3 losses other than support ("C3-Other")

170. In its first instalment, the Panel considered only two claims for burial expenses and none for medical expenses. The Panel's recommendations therefore reflected its individual review of the evidence in such cases. [172] In view of the limited number of C3 claims for medical, burial or other expenses, or any combination thereof, the Panel determined that each claim should also be manually reviewed. In order for claims for C3-Other losses to be compensable, the claimants must have provided the date of death, proven the fact of death, demonstrated a causal link to the Iraqi invasion and occupation of Kuwait and provided evidence in support of the amount(s) claimed.

171. For claims meeting these threshold criteria, and considering the lump sum award amounts of US$2,500 awarded in category "B" for death claims, the Panel used the following rules to determine compensation for these losses. First, all C3-Other losses were reviewed manually. Where amounts claimed were in excess of US$2,500, the Panel awarded an initial amount of US$2,500, increased up to any amount greater than US$2,500 that could be proven by primary evidence such as bills or receipts. Where amounts claimed were in excess of US$2,500 and there was some evidence, such as a claimant statement or witness statement, but no primary evidence to support an amount higher than US$2,500 in support of pecuniary loss, the Panel awarded a lump sum amount of US$2,500. Where amounts claimed were less than US$2,500 and there was evidence of some pecuniary loss, [173] the Panel awarded the amount claimed by the claimant.

c. Deduction of amounts awarded in category "B" from C3-Money awards

172. The Panel noted further that any amounts awarded in category "C" for either C3-Support or C3-Other should be reduced by amounts awarded to the same claimant for the same deceased person in category "B". Deductions were made accordingly from the award in category "C" when such matches were found during the inter-category matching exercises between category "B" and category "C".

d. Recommendations for claims for C3-Money losses included in the seventh instalment

173. After recategorization to appropriate loss categories where appropriate, there are 2,203 claims for C3-Money losses included in this seventh instalment. The Panel has recommended compensation in 1,634 claims, 1,540 for C3-Support losses alone, 248 for C3-Other losses alone, and 154 for C3-Support and C3-Other losses (collectively C3-Money) in combination. In all, the Panel has resolved 2,216 claims for C3-Money losses.

2. Claims for C3 mental pain and anguish for death of a spouse, child or parent ("C3-MPA" losses)

(a) Experience of the first instalment

174. Decision 3 entitles claimants to compensation for MPA caused by the fact of the death of a spouse, child or parent or from witnessing the intentional infliction of events leading to the death of their spouse, child or parent. The Panel observed in the first instalment that, once the fact of death has been proven, the presence of MPA may reasonably be assumed. Thus, for all cases of compensable C3 death losses, claimants have also been awarded C3-MPA for the fact of death. As with C2-MPA awards, in considering the calculation of awards for C3-MPA losses, the Panel reached all recommendations in the first instalment after considering the modifying factors related to death as enumerated by the panel of experts [174] and the ceiling amounts for C3-MPA for fact of death in decision 8.

175. In respect of claims for C3-MPA for witnessing death, the Panel determined that deaths resulting from torture, execution and aggravated physical assault may be presumed to have been caused intentionally.

(b) Findings of the Panel in respect of claims for C3-MPA included in the seventh instalment

176. In determining amounts to be awarded to claimants for C3-MPA losses, the Panel considered that eligibility for C3-MPA compensation must be based on an approved claim for death. As with C2-MPA, this threshold was presumptively met in the case of a corresponding approved claim for death in category "B". The Panel determined further, that claims for C3-MPA alone, without an approved claim for death, were not compensable. For the seventh instalment, in addition to a manual review of claims for C3 death losses, the Panel studied data extracted from the database concerning certain claimant MPA profiles in connection with C3 death losses. [175] As a result of these extensive reviews, the Panel adapted the modifying factors utilized in the first instalment to the requirements of mass claims processing by utilizing the electronic indicators to determine incremental increases over base C3-MPA amounts of US$5,000. The Panel took into consideration whether there was also a claim for witnessing the intentional infliction of events leading to death. This fact may also have increased the base C3-MPA awards.

(c) Recommendations for claims for C3-MPA included in the seventh instalment

177. There are 2,781 claims for C3-MPA included in this seventh instalment. The Panel has recommended compensation in 2,338 claims for C3-MPA for the underlying death of a spouse, child or parent and in 97 cases for C3-MPA for witnessing the intentional infliction of events leading to the death of a spouse, child or parent. In total, the Panel has resolved 2,789 claims for C3-MPA.

D. Loss type "C4": damages arising from personal property losses

1. C4 damages arising from loss of clothing, personal effects, household furnishings and other personal property items ("C4-CPHO" losses)

178. Decision 1, paragraph 14, provides that compensation payments are available for losses of personal property arising directly from Iraq's unlawful invasion and occupation of Kuwait. On page "C4" of the claim form, claimants indicated whether they were claiming for losses of clothing, personal effects, household furnishings or other personal property items not included in the foregoing categories. Claimants were further instructed to attach appropriate documentary evidence establishing ownership of the property items and explaining the method of valuation used. Since the Second Report, personal property losses have generally been referred to as C4-CPHO losses.

(a) Experience of the first instalment

179. In considering claims for personal property losses in the first instalment, the Panel consulted several sources in respect of personal property ownership in Iraq and Kuwait.[176] The Panel noted that the main causes of personal property losses in Kuwait were the looting and vandalism of personal and real property by members of the Iraqi occupying forces. The Panel found that the main causes of personal property losses in Iraq were the inability of departing workers to transport many personal belongings with them and their continued inability to return to Iraq as a matter of choice or circumstance.[177]

180. The Panel noted that personal property losses were the most common type of loss for which claims were made in the first instalment. The Panel foresaw that such losses would continue to be the most frequently claimed.[178] Based on sample claims reviewed, personal property claims appeared to be very diverse in terms of the type and quality of evidence submitted, the manner in which the claims were prepared, the type and value of the items for compensation was requested and the total amounts claimed.

(i) Processing considerations and methodology

181. In its considerations, the Panel noted that article 37 of the Rules authorized the use of sampling to verify claims where the number of claims was large. While claims for personal property losses were diverse in every respect, they were still to be considered "urgent" claims, to be processed on an expedited basis. The Panel further noted that the number of personal property claims in the first instalment was relatively small in comparison to the total population of such claims to be reviewed in future instalments. Thus, the Panel stressed that the criteria set forth in the first instalment for verifying and compensating claims were applicable primarily to the claims in that instalment. Although the Panel made an effort to establish criteria that could be relevant to personal property claims in future instalments, it noted that the extent to which these criteria might require further development would depend on the characteristics of the claims in those instalments. [179]

182. The Panel specifically considered that, while an individualized review of each claim might have been warranted in the light of the diverse nature of the personal property claims, given the volume of claims, such a methodology, or any variation thereof, would likely require significant processing time, which would be contrary to the Governing Council's mandate that "urgent claims" be processed on an expedited basis. Accordingly, the Panel adopted a methodology for personal property claims entailing: (a) the grouping of claims presenting similar legal and factual issues; (b) the individualized review of sample claims from the relevant groupings; (c) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (d) the extrapolation of its findings in respect of sample claims to the non-sampled claims; and (e) additional verification of individual claims only when necessary. [180]

(ii) Relevant issues and criteria

183. To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established (a) the fact of ownership of the personal property items they were claiming; (b) the fact of their loss and that it was causally related to Iraq's invasion and occupation of Kuwait; and (c) the value of their claim.

a. Fact of ownership

184. The Panel considered that generally the best form of evidence to prove ownership included receipts, bills, invoices and similar forms of primary documentation. However, only fifteen per cent of first instalment claimants provided such documentation. [181] Therefore, the Panel determined that in the absence of such primary proof, evidence in the form of itemized lists, personal statements and witness statements constituted the best evidence available as proof of ownership. The Panel found that such evidence constituted the "reasonable minimum" that was appropriate to establish the fact of ownership of the items claimed.

b. Fact of loss and causal relation to invasion

185. Because the factual circumstances surrounding personal property losses were well-documented, the Panel determined that to the extent that an individual claimant had established that he or she was resident in Kuwait or Iraq at the time of the invasion, it was likely that (a) some form of personal property loss was suffered and (b) this loss was directly related to Iraq's invasion and occupation of Kuwait, either through looting or vandalism, clean-up operations, urgent departure for fear of personal safety, or inability or decision not to return to Iraq or Kuwait. In view of these and other relevant circumstances, the Panel concluded that personal property losses suffered by an individual, who had established that he or she was resident in Kuwait or Iraq at the time of the invasion, were directly related to Iraq's invasion and occupation of Kuwait.

c. Value of loss

186. The Panel noted that claimants generally submitted the same documentation in support of the value of their claims as they did to prove their ownership of the items claimed. Primary evidence such as receipts, invoices, bills and similar documentation constituted the best evidence in support of value. However, considering all circumstances, fewer than fifteen per cent of claimants in the first instalment were able to submit such documentation. At the same time, a very high percentage of claimants submitted itemized lists, personal statements and witness statements in support of the value of their personal property losses. However, claimants generally did not explain the method of valuation used, or used different valuation bases and methods for similar items. Amounts claimed for similar items often varied considerably.

187. On the basis of the evidence reviewed, the Panel was able to conclude that claimants had suffered significant personal property losses, measured in monetary terms. However, in view of the great diversity of the evidence submitted in support of valuation, and given that the nuances of individual claims could not be considered within the context of a mass claims processing methodology, the Panel was unable to value claimants' losses solely on the basis of the evidence submitted.

188. In the light of this lack of primary evidence, and to ensure consistency in the method used to compensate all claimants, the Panel decided to use a statistical model to estimate amounts that claimants might reasonably have been expected to claim based on (a) the amounts claimed by similarly situated claimants within the population and (b) certain individual characteristics of claimants relevant to predicting an individual claimant's property accumulation behaviour, and hence, property losses. [162] Using the model, amounts claimed by individual claimants were compared with amounts claimed by other claimants, taking into account their respective personal characteristics and property accumulation indicators.

189. The Panel was of the opinion that compensation awarded on the basis of the comparison of amounts claimed with those estimated by the statistical model was (a) reasonable, in that it reflected the patterns in the amounts claimed by all claimants in the population; (b) equitable, in that no claimant was awarded an amount higher than that to which the Panel had established that he was entitled; and (c) as tailored as possible, within the framework of a mass claims processing methodology, to reflect the individual circumstances and characteristics of the claimants. Still, the model used in the first instalment was not based on a representative sample of the entire category "C" claimant population, but only on a representative sample of claimants in the first instalment.

(b) Refinement of the processing and valuation methodology since the first instalment

(i) Development of a statistical model using a data set representative of all category "C" claimants with C4-CPHO losses

190. In its Second Report, the Panel reiterated its conclusions from the first instalment for claims for personal property losses ("C4-CPHO") and once again considered the application of statistical tools. Linear regression analysis provided a means for taking into account individual characteristics relevant to the determination of compensation awards. [183]

191. Therefore, to develop a valuation model representative of the entire claimant population, the Panel, in the second instalment, relied both on the advice of independent statistical experts, [184] and on the data contained in all category "C" claims submitted to the Commission. A statistical model for all C4-CPHO losses was developed from relevant data taken both from external sources and from the claim forms. This model was based on the largest possible representative sample, thus including 56,092 category "C" claims containing C4-CPHO losses. [185] In accordance with standard statistical practice, the base model was then tested on a replication sample of claims different than those used to build the base model. The tests confirmed the explanatory power of the base model. Moreover, comparisons of the compensation results for both groups revealed no significant differences in outcome. Finally, the results obtained from the modelling were analysed in the light of external data relating to wealth and proper y accumulation patterns of persons living in Iraq and Kuwait. This analysis generally confirmed the modelling results. [186]

192. To further validate the valuation results obtained by the model, the Panel verified, on a sample basis, the evidence submitted in support of C4-CPHO losses. In addition to confirming the immense diversity of the items claimed, the sampling results revealed patterns of evidence similar to those observed in the first instalment. While approximately 90 per cent of C4-CPHO claimants had submitted some form of evidence in support of their

claims in addition to the claim form, given all considerations and circumstances, the Panel concluded that the statistical regression model developed would be the best available option for valuing such claims within the context of a mass claims processing programme. Thus, the Panel determined that claims for C4-CPHO losses should be compensated at the lower of the amount claimed or the amount generated by the statistical model.[187]

(ii) Issues in respect of outlier claims

193. In selecting the statistical models to value loss elements in both C1-Money and C4-CPHO claims, the Panel expressed concern with two situations involving outlier issues: (a) claims with outlier amounts claimed;[188] and (b) claims with outlier amounts recommended.[189]

194. Claims containing outlier amounts claimed were excluded from the model building phases when developing the linear regression models used to value both C1-Money and C4-CPHO losses. However, once these claims had been reviewed for data error and amended if such was warranted, the model was applied to them. Thus, in such cases, the lower of the amount claimed or the amount calculated by the model was awarded to these claimants as well. Because the parameters of both models had been determined by using representative samples of the claims with these loss elements, all claims were treated alike on the basis of a common mathematical formula.

195. If, following the application of the models, awards resulted in outlier amounts recommended, the claims were not included in an instalment until they had been reviewed for error. Once reviewed, after any errors were corrected, the model was reapplied and the claims were reported in a subsequent instalment. Reviews of outlier amounts recommended that were in the second through fourth electronic processing cycles were not completed until the fifth instalment.[190] Others were included in the sixth instalment.[191] However, the majority of outlier claims are included in this seventh instalment.

196. Following the results reported in the fifth instalment, given the high expectations of some claimants and the comparatively low results awarded to them by the models, in particular the C4-CPHO model, some Governments raised concerns about whether the C4-CPHO model was defective or had been incorrectly applied. The Panel noted in its Sixth Report that neither was the case. Based on manual evidentiary review of outlier claims, sampling results and electronic surveys of the database, the C4-CPHO model had been demonstrated to be neither defective nor incorrectly applied, nor had its results been inequitable, unjustified or unfair under the circumstances.[192] Further, manual reviews had confirmed that amounts awarded by the models were fully as equitable as amounts supported by primary valuation evidence, when such was available.[193]

197. However, in consideration of the observed instances of general claimant confusion in entry of amounts into the proper loss fields and of the possibility that some disproportionate calculations by the model for outlier claims could be a result of this confusion, the Panel determined that it would revise its approach in respect of pending outlier claims. Once entries had been scrutinized for error, the Panel determined that, for any outlier claim where the recommended award amount was 35 per cent of the amount claimed, the total loss amount claimed for C1-Money or with C4-CPHO should be reallocated equally among all respective relevant loss sub-elements.[194] The Panel ultimately concluded that it should expand this decision for C4-CPHO losses to make the reallocation available to more claimants.[195] Thus, in this seventh instalment, all claimants with C4-CPHO losses who, after application of the statistical model, received recommended award amounts for these losses that were less than 50 per cent of the amount claimed, had amounts reallocated equally among the three loss sub-elements. The statistical model was then reapplied. Following the reapplication of the model, claimants were awarded the lower of the amount generated by the model or the amount claimed.

198. To the extent that any claimant may still have a disproportionately low outcome, it is because the model-generated award has taken the individual profile of that claimant into account and compared the amount claimed by that claimant with amounts claimed by similarly-situated claimants. Finally, in respect of claimants whose claims were reported in the second to sixth instalments and whose recommended awards for C4-CPHO losses were less than 50 per cent of the amount claimed for C4-CPHO, the Panel determined, in the interests of consistency, that those awards should be corrected in accordance with article 41 of the Rules. These corrections will be reported to the Governing Council following the completion of all processing activities in category "C".

(c) Recommendations for claims for C4-CPHO losses in the seventh instalment

199. The seventh instalment includes 43,305 claims that contain C4-CPHO losses. Of that number, 43,303 have been recommended for compensation in an amount of US$473,521,479. The category "C" claims programme has considered and resolved a total of 143,184 C4-CPHO losses.

2. Claims for C4 motor vehicle losses ("C4-MV")

(a) Findings of the Panel in the first instalment

200. In addition to claims for C4-CPHO, claims for motor vehicle-related ("C4-MV") losses may be submitted on the "C4" page of the claim form. Claims may be made for the total loss or theft of a vehicle, or for the cost of repairs due to damages caused by Iraq's invasion and occupation of Kuwait. As with C4-CPHO losses, claimants were requested to attach appropriate documentary evidence establishing ownership of the property

item and explain the method of valuation used. There are fields for entry of data specifying the make, model, and year of the motor vehicle or vehicles claimed for, as well as the registration or identification number. The Panel observed that most claimants typically provided the make, model and year of the motor vehicle and a significant number of claimants also provided the registration number or vehicle identification number. Most gave an estimate of the value of the vehicle at the time of the loss. However, fewer than fifty per cent indicated the method used to arrive at the value asserted.[196]

201. In the first instalment, the Panel considered a total of 509 C4-MV claims. Given the number of claims in the first instalment, the Panel's methodology entailed: (a) the classification of all motor vehicles according to make, model and year; (b) the individualized review of the evidence available in support of the claims; and (c) the valuation of claims found to be eligible for compensation according to a standardized motor vehicle valuation table created for such purposes. However, the Panel foresaw that this methodology might warrant modification in later instalments in order to facilitate the expedited processing of motor vehicle claims.

(i) Relevant issues and criteria

202. The Panel identified and considered three evidentiary issues relevant to the assessment and disposition of motor vehicle claims in the first instalment: (a) the fact of the claimant's ownership of the motor vehicle; (b) the fact of the claimant's loss; and (c) whether the claimant's loss was causally related to the Iraqi invasion and occupation of Kuwait. Once these criteria were met to establish compensability of the loss, the issue of valuation became relevant.

a. Fact of ownership

203. The Panel determined that claimants providing some form of official documentation such as car insurance records, car registration papers, drop-registration certificates, police reports, etc., could be considered to have proven the fact of ownership of the motor vehicle or vehicles to which the documentation pertains. However, the Panel also determined that a lesser degree of evidence might be sufficient in certain circumstances. Specifically, it held that non-Kuwaiti claimants may be deemed to have established the fact of ownership if they have submitted a claim form containing the make or model for each motor vehicle together with the registration number or vehicle identification number, along with the original cost or value of each motor vehicle.[197]

b. Fact of loss and causation

204. Considering all circumstances, in particular that claimants were not requested to explain how the loss occurred, the Panel adopted several presumptions for the determination of fact of loss and causation. It determined that, in the case of a claim for total loss or theft of a vehicle, the claimant's motor vehicle loss may be considered to be related to the invasion if the vehicle was left in Iraq or Kuwait. Where it is not indicated that the claimant used his or her vehicle to depart from either country, it may be presumed that the vehicle was left there. Claimants who indicated that they left Iraq or Kuwait in their own vehicles may have their losses considered to be causally linked to the invasion if the vehicles were left in a country known to have been a formal or informal point of departure from the region. [198]

205. The Panel determined further that claims for repair costs incurred in Kuwait or Iraq during the period 2 August 1990 to 31 August 1991 may be presumed to be causally related to Iraq's invasion and occupation of Kuwait. However, for repairs after 31 August 1991, the Panel determined that special circumstances must be observable from the claim form or attached documentation relating the costs incurred to events that took place during, or that arose out of, Iraq's invasion and occupation of Kuwait. Repair costs incurred by departing persons after 2 August 1990 for normal "wear and tear" incurred while en route to their final destination may also be considered to be causally related to the invasion. [199]

(ii) Valuation of C4-MV claims for total loss or theft

206. In view of the wide variation in the amounts claimed for similar automobiles or classes of automobiles, the inconsistency of the valuation-related information (make, model and year) provided by claimants, the lack of uniformity in the purchase prices indicated by claimants for similar automobiles, and the lack of consistency in the documentation submitted, the Panel determined that for automobiles that were destroyed, lost or stolen as a result of the Iraqi invasion, the amount of compensation awardable should be calculated on the basis of an estimation of the fair market value of the vehicle as of 1 August 1990. [200] For this estimation, the Panel relied upon a standardized table of motor vehicle values, the Motor Vehicle Valuation Table ("MVV Table"), prepared by the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), the Kuwaiti Government agency administering the Kuwaiti claims programme. [201] PAAC provided standard market values indexed by make, model and year for motor vehicles in Kuwait for the years 1980 to 1990, depreciated to reflect the current value of motor vehicles as of August 1990.

207. Thus, in the first instalment, the Panel determined that the amount of compensation to be awarded should be calculated on the basis of a comparison of the amounts claimed by claimants found to have established the fact of ownership with the value indicated for the underlying vehicle

in the MVV Table. The award should in no event exceed the lesser of the amount claimed or the corresponding value for the motor vehicle in the MVV Table.[202]

208. The Panel valued claims for unique motor vehicles, such as boats, on a claim-by-claim basis or recategorized them as business losses on the "C8" page if the vehicle was a truck, crane or other heavy duty vehicle that appeared to have been used in the claimant's business.

(iii) Valuation of C4-MV claims for repairs

209. The Panel observed that claimants who submitted claims for C4-MV repair costs were more often able to present evidence in the form of receipts and invoices. Mindful of the Governing Council's guideline that a lesser degree of evidence may be sufficient for claims for lower amounts, and considering the patterns of evidence and of amounts claimed observable in the claims, the Panel adopted the following criteria for determining the amount of compensation payable for C4-MV repair costs:

(a) claims for repair costs up to US$500, whether incurred within or outside Kuwait, required only proof of the fact of ownership of the motor vehicle;

(b) claims for repair costs above US$500, but less than US$2,500, which were incurred within or outside Kuwait, had to be supported by at least a claimant statement itemizing the costs incurred, and explaining the factual circumstances giving rise to the claimant's losses; in the absence of the foregoing, the claimant was awarded an amount of US$500;

(c) claims for repair costs above US$2,500 which were incurred within or outside Kuwait had to be documented by receipts, invoices, bills of sale or other primary documentation; in cases where the amount claimed for repair costs was higher than the value of the motor vehicle according to the MVV Table, the Panel considered the loss to be a "total loss" and awarded the lesser of the amount claimed or the value of the vehicle according to the MVV Table.[203]

(b) Findings of the Panel since the first instalment

(i) Claims for C4-MV total loss or theft submitted by non-Kuwaiti claimants

210. Claims for C4-MV losses that were considered in the second instalment had been entered into the Commission's database. As part of the data entry process, the applicable motor vehicle values from the MVV table had been determined, where possible, and entered into the appropriate database fields for the corresponding claims. For the second instalment therefore, the Panel considered the rebuttable presumptions it applied in the first

instalment in respect of the fact of loss and its causal relationship to the Iraqi invasion and occupation. The Panel also considered its first instalment determination that non-Kuwaiti claimants were considered to have proven the fact of ownership of the underlying vehicle by providing (a) the make or model of the motor vehicle, (b) the registration or vehicle identification number, and (c) the original cost or value of the vehicle.

211. Each criterion is capable of being electronically ascertained. Therefore, since the second instalment the Panel has applied a programmatic solution to all claims for C4-MV losses that were submitted by non-Kuwaiti claimants and that satisfied the ownership criteria. The Panel determined the recommended amount of compensation by selecting the lowest of three amounts: (a) the amount of loss claimed for the motor vehicle on the "C4" page of the claim form; (b) the MVV Table value corresponding to the motor vehicle; or (c) the original cost or value of the vehicle as stated on the "C4" page of the claim form. [204]

(ii) Claims for C4-MV total loss or theft submitted by Kuwaiti claimants

212. As noted earlier, claims by Kuwaiti nationals were submitted to the Commission in both paper and electronic format. While the Panel had determined in the first instalment that the documentation submitted with these claims proved ownership of the underlying motor vehicles, no separate values had been entered into the corresponding MVV Table fields in the electronic claims. Therefore, claims by Kuwaiti nationals containing C4-MV losses were not included among claims in the second instalment. However, a sampling project was conducted following the second instalment to confirm that the amounts of loss claimed in these C4-MV claims conformed to the MVV Table values. The results of the sample confirmed that the amount of loss claimed on the electronic claim by Kuwaiti nationals was the equivalent of the MVV Table value. Thus, claims for C4-MV total loss or theft that were submitted by Kuwaiti nationals were reported for the first time in the fifth instalment. [205]

(iii) Elaboration of proof of ownership criteria

213. Approximately 14,000 C4-MV claims remained unresolvable by electronic means because they lacked some element of the electronically ascertainable proof of ownership criteria. Therefore the Panel directed that additional sampling exercises be undertaken to ascertain whether outright rejection of such claims or simple refinement of the ownership criteria was warranted. The sampling results showed that (a) outright rejection would not be a fair outcome for most claimants, [206] and (b) the majority of claims failed the proof of ownership test simply because there was no entry in the field "original cost or value". An electronic survey determined that 71 per cent of the losses surveyed had an entry in the field "amount claimed" and that the entry was the equivalent of the original cost or value. [207]

214. Considering the results of the electronic survey and the manual sampling exercise, the Panel determined that the proof of ownership criteria could be elaborated so that in the absence of an entry in the field "original cost or value", an entry in the field "amount of loss" would suffice as electronic proof of ownership. The Panel further determined that the refined proof of ownership criteria would be applicable both to claims for lost or stolen vehicles and to claims for repairs. Finally, the Panel determined that C4-MV claims that still did not meet the refined electronic proof of ownership were not compensable. [208]

(iv) Categorization of claims for lost or stolen vehicles versus claims for motor vehicle repairs

215. Another threshold difficulty for the resolution of approximately 15,000 C4-MV losses was that the type of loss was not indicated either on the paper claim or in its electronic equivalent. After inconclusive results from sampling projects, the Panel determined that a logistic regression model should be applied to the claims in question to predict whether the losses should be classified as (a) lost or stolen vehicles or (b) repairs to motor vehicles. As a result of this model, approximately 14,000 losses were deemed to be for lost or stolen vehicles and fewer than 1,000 losses were deemed to be for repairs. [209]

(v) Valuation of motor vehicles without MVV Table values

216. Up to the sixth instalment, certain C4-MV losses could not be processed electronically because they lacked an MVV Table value for comparison purposes. This could be explained, inter alia, by the following factors: (a) there was no entry of MVV Table value; (b) there was data entry error; (c) the vehicle was not present in the MVV Table; (d) the vehicle was an extraordinary vehicle, such as a truck or bus, etc.; (e) the vehicle was either a boat or a motorcycle; or (f) there was simply insufficient information in the claim file. [210] In the sixth instalment, therefore, the Panel decided on a sequence for the determination of values for C4-MV losses that did not have values. [211] With the exception of one group of C4-MV claims, [212] all MVV values were thus determined.

(vi) Methodology adopted by the Panel for the electronic resolution of claims for C4-MV repair costs

217. Also in the sixth instalment, the Panel modified its earlier valuation methodology for repairs to enable the electronic resolution of claims for C4-MV repair costs. In the light of the external valuation methods used successfully to resolve large numbers of C1-Money and C4-CPHO losses, the Panel adopted a linear regression model to assist with the valuation of recommended amounts for C4-MV repair losses with amounts claimed in excess of US$500. For each claimant, the amount generated by the model was compared to the amount claimed by the claimant and to the MVV

Table value for the corresponding vehicle. Providing that proof of ownership criteria were met, the lowest of the following three amounts was recommended for compensation:

(a) claims for C4-MV repair costs up to US$500 were compensated in the amount claimed;

(b) claims for C4-MV repair costs in excess of US$500 were compensated in accordance with:

- (i) application of the linear regression model developed to resolve C4-MV repairs;
- (ii) comparison of the result generated by the model with the amount claimed by the claimant and the objective MVV Table value of the corresponding vehicle;
- (iii) selection of the lowest amount of the three, provided that this amount was not less than US$500. In the event that the amount generated by the model was less than US$500, the claimant was awarded US$500.[213]

(vii) Methodology adopted by the Panel to resolve claims for C4-MV boats and motorcycles

a. Methodology applicable to claims for C4-MV boats and motorcycles that were submitted by Kuwait

218. The Panel considered that C4-MV claims for boats and motorcycles that were submitted by Kuwait on behalf of its nationals were uniformly well-documented for many of the same reasons that C4-MV claims by Kuwaitis were consistently well presented. Moreover, all Kuwaiti claimants in sampled claims met the proof of ownership criteria. The Panel considered the general C4-MV precautions and methodologies utilized by PAAC along with the efforts asserted by PAAC to ensure reasonable estimates of value for the "vehicles" claimed.[214] The Panel determined therefore that these estimates could be deemed to be probative of value. So long as claims for boats and motorcycles by Kuwaiti nationals met the proof of ownership criteria, the Panel determined that they would be compensated in an amount equal to the lower of the "amount claimed" or the "original cost" as stated on the "C4" page.

b. Methodology applicable to claims for C4-MV boats and motorcycles that were submitted by countries other than Kuwait

219. In contrast to the general conclusions applicable to Kuwaiti claimants, no general conclusion in respect of level and quality of documentation could be drawn in respect of the comparatively small number of claims submitted by non-Kuwaiti nationals for boat and motorcycle losses. The Panel considered a comparison exercise between claims for boats and motorcycles submitted by non-Kuwaitis and those submitted by Kuwaitis in order to determine whether values claimed could thereby be verified. However, after a manual review of the claims concerned, the Panel determined that such a comparison exercise was not feasible, in part due to wide disparities in description, particularly in respect of customization of boats. Further, the Panel considered that, even if such a comparison exercise could feasibly be undertaken, the great majority of claimants would still not have met the electronic proof of ownership criteria and would thus not be compensated in any event.

220. Taking note of this real inability of non-Kuwaiti claimants to recover compensation for boat and motorcycle losses in accordance with the C4-MV formula, the Panel considered that the claimants should recover at least some amounts for these items. Therefore, the Panel directed the secretariat to recategorize these C4-MV losses to C4-CPHO losses, thereafter to be reallocated, where warranted, in accordance with the C4-CPHO reallocation exercise adopted by the Panel.[215] In respect of these losses therefore, the secretariat has performed this recategorization and, where appropriate, has reallocated amounts among C4-CPHO loss sub-elements.

(c) Recommendations for claims for C4-MV losses in the seventh instalment

221. The seventh instalment includes 17,877 claims for C4-MV losses. Of that number, 15,515 have been recommended for compensation and 2,362 have not been recommended for compensation. Throughout the category "C" claims programme, of a total of 43,125 C4-MV losses, 39,687 have been recommended to receive compensation and 3,428 have not.

E. Loss type "C5": damages arising from losses from bank accounts, stocks and other securities

222. In the first instalment, the Panel considered a total of 389 claims for losses from bank accounts, stocks and securities: 376 claims for bank accounts in Kuwait; five claims for bank accounts in Iraq; and eight claims for stocks and other securities.

1. Claims for losses arising from bank accounts ("C5-BA")

223. Circumstances of bank account losses in Kuwait were well-documented and described in external sources. From 6 August 1990, most banks in Kuwait remained closed for the duration of the invasion: assets were frozen and branches had no access to records for information on the status of funds in Kuwait. While less information was available concerning banking operations in Iraq during the course of the invasion and occupation, Iraqi banks continued to operate within Iraq until immediately prior to the commencement of the Allied Coalition Forces offensive in January 1991. Their foreign branches, however, were made subject to the United Nations' embargo and asset freeze, which was imposed on 6 August 1990.

224. Following the withdrawal of Iraqi troops from Kuwait, banks operating in Kuwait resumed limited activities, effective as of 24 March 1991. Until 3 August 1991, restrictions on bank withdrawals were in effect. Following the lifting of the withdrawal restrictions, all holders of bank accounts were able to withdraw their funds freely. For foreign account holders who had not returned, the Government of Kuwait adopted measures, through the Central Bank of Kuwait, to make funds freely available to the beneficiaries of those accounts.

225. In contrast, Iraqi banks and their branch offices continue to be subject to the United Nations' sanctions and the economic embargo enacted pursuant to Security Council resolution 661 (1990), to national sanctions implemented by certain countries pursuant thereto, and to provisions of various Iraqi domestic laws. As such, access to accounts in Iraqi banks remains difficult, if not impossible, for persons no longer resident in Iraq.[216]

(a) Claims for losses arising from bank accounts in Kuwait

226. Considering the measures put into place by the Central Bank of Kuwait to provide claimants access to amounts on deposit with Kuwaiti banks and that claimants availing themselves of those procedures had been able to recover their deposits, the Panel determined in its first instalment that claims for such deposits were not compensable by the Commission.[217] It reaffirmed this conclusion in the second instalment.[218] In both instalments, the Panel instructed the secretariat to forward lists of such claimants, through the Government of Kuwait, to the Central Bank of Kuwait. Accordingly, that procedure has been followed for each instalment of category "C" claims.[219]

(b) Claims for losses arising from bank accounts in Iraq

(i) Findings of the Panel in the first instalment

227. In connection with bank account claims involving Iraqi banks, however, the Panel reviewed and resolved each claim on its own merits. Claimants generally asserted either that the Iraqi Government refused to permit the transfers of funds in their accounts in Iraqi banks or that the banks failed to respond to requests for withdrawals. In considering the five claims presented, the Panel found of particular relevance documentation submitted by the claimants in support of their losses, the specific factual circumstances underlying the claims, the limited availability of information regarding bank operations in Iraq after 2 August 1990 and general principles adopted in international banking practice. Therefore, in the first instalment, the Panel established no general criteria for this loss element.[220]

(ii) Jurisprudence of the Commission since the first instalment

228. Since the first instalment, other Panels have considered various issues in connection with funds transferred through or deposited in bank accounts in Iraq. The Panel of Commissioners Concerning the Egyptian Workers' Claims ("the 'EWC' Panel") considered the non-transfer by Iraq of remittance amounts in connection with funds deposited into Iraqi bank accounts after 2 August 1990 by Egyptian workers for the purpose of transferring the United States dollar equivalent to banks in Egypt for the support of their families in Egypt. The "EWC" Panel found that, while the workers' salaries were deposited in Iraqi banks and the funds were still available for withdrawal at any time, the Iraqi banks were under an obligation to transfer the equivalent sums in United State dollars under an agreement entered into with banks in Egypt.[221]

229. On the other hand, the Panel of Commissioners reviewing "E2" Claims ("the E2 Panel"), in considering a claim for loss of use of financial assets held in deposit in Iraqi financial institutions, determined that the loss was not compensable.[222] The claimant had departed from Iraq as a result of the invasion and occupation. While the funds in the account were not expropriated, moved, stolen or destroyed, they were of no use to the claimant outside Iraq. The "E2" Panel distinguished its non-compensable claim from the compensable claims considered by the "EWC" Panel in that the funds in the "E2" claimant's account were non-transferable and non-exchangeable from the time the claimant opened the account. The account was intended to be used by the claimant to finance its activities in Iraq, while the claimants in the "EWC" claims had the underlying expectation of routinely having United States dollar amounts transferred to Egypt.

(iii) Findings of the Panel in the seventh instalment

230. Subsequent reviews of claims for C5-BA losses in Iraq continued the trend observed by the Panel in the first instalment. Claimants generally fell within the two situations represented in the "EWC" claims and the "E2" claim. The first situation included claimants who had an underlying expectation of having remittances transferred to their home countries. The second situation included claimants who deposited funds into their accounts in Iraq in the expectation of using those funds to finance their lifestyle and activities in Iraq.

a. Fact of ownership

231. Before making any decision regarding compensability in respect of C5-BA losses in Iraq, the Panel determined that basic criteria must be satisfied to demonstrate fact of ownership, fact of loss and causation. In order to demonstrate proof of ownership, claimants must have (a) entered their names as account holders; (b) provided the names of their banks in Iraq; (c) provided the account numbers; and (d) stated the dates on which they attempted to make their withdrawals or send their remittances. In order to determine whether claimants satisfied these basic criteria, electronic surveys of the database were implemented. In addition, manual reviews of sample claims were undertaken.

232. Of the approximately 2,800 category "C" claims containing this loss element, more than 1,800 were submitted by claimants from Egypt. Reviews of sample claims submitted by Egypt demonstrated that the overwhelming majority of claims for C5-BA losses in Iraq were created erroneously. Further, Egyptian claimants in the comparatively few valid claims presented evidence, not for bank accounts, but for non-transfer of remittance amounts, the subject matter of the "EWC" claim. The Panel was concerned that these claimants may already have been included within the "EWC" claim. Because it was not feasible to implement cross-checks between individual claimants in category "C" and those grouped within the "EWC" claim so as to categorically exclude the possibility of duplication, the Panel determined that claims for C5-BA losses in Iraq that were submitted by Egypt were not compensable.

233. All remaining claims were reviewed manually. To the extent that the relevant information could be ascertained from the claim form or the attached documentation, claimants were deemed to have proven the fact of ownership. However, many claimants for C5-BA losses in Iraq failed this threshold determination.

b. Fact of loss and causation

234. On the "C5" page of the claim form, in addition to information indicating proof of ownership, claimants were requested to indicate the type of bank account. The Panel determined that, when an account was designated as a "transfer" account, the designation presumptively indicated

the claimant's underlying expectation that funds would be remitted through that account to his or her home country. Conversely, the Panel determined that an account that was designated as a "deposit" account presumptively indicated a claimant's intention to use the funds for living or business expenses while in Iraq. However, most claimants did not indicate the type of account. Even when they did, confusion between deposit and transfer accounts was apparent. Therefore, assessments of whether the accounts were used to transfer funds were made at the time of review. Considering the reasoning of the "E2" Panel, the "C" Panel determined that "deposit" accounts were not compensable. Thus, only accounts designated as "transfer" accounts could be eligible to receive compensation.

235. However, the Panel also determined that two additional elements were necessary for a claim for C4-BA losses in Iraq to be considered compensable. First, the date of attempted withdrawal or transfer had to have occurred during the period of 2 August 1990 to 2 March 1991. Second, the claimant had to have a demonstrated pattern of transfer, either by belonging to a claimant group that routinely and regularly transferred small amounts to their home countries, [223] or by providing primary documentation in the claim file that indicated an entitlement to do so. If a claimant had successfully demonstrated this pattern of transfer, the Panel determined that non-transfer of the monies claimed for could be presumed to be causally related to the invasion and occupation.

236. In this regard, the Panel requested that the secretariat undertake research in respect of transfer rights of remittances. The secretariat concentrated on seven countries: Bangladesh, India, Jordan, Pakistan, the Philippines, Sri Lanka and Tunisia. [224] The research concluded that, while there were indeed patterns of transfer of remittances among these claimant populations, many such transfers may also have occurred informally and sporadically rather than formally and regularly. Moreover, reviews of claim files indicated that certain claimants employed in Iraq were entitled to have percentages of their monthly salary routinely transferred to their home countries. The Panel found it significant that, in a majority of such cases, claimants were not also claiming for salary losses on the "C6" page.

(iv) Valuation of compensable claims for C5-BA losses in Iraq

237. Considering all findings, noting that the number of claimants who met all criteria for compensation was relatively small and that the claimant groups most represented were among those who were most adversely affected by the invasion and occupation of Kuwait, the Panel determined that it would award compensation based on an average monthly transfer amount per claimant nationality group. Consistent with its application of a multiplier of seven to C6-Salary losses, the Panel determined that valuation of compensable C5-BA losses in Iraq should be based on the lower of (a) the amount claimed by the claimant, or (b) the average monthly transfer amount increased by a multiplier of seven.

(v) Recommendations for claims for C5-BA losses in Iraq included in the seventh instalment

238. There are 2,266 claims for C5-BA losses in Iraq included in this instalment. The Panel has recommended compensation in 90 claims and has not recommended compensation in 2,176 claims. Including the five claims resolved in the first instalment, the Panel has resolved a total of 2,181 claims for C5-BA losses in Iraq.

2. Claims for losses arising from stocks or securities ("C5-SOS")

(a) Findings of the Panel in the first instalment

239. On the "C5" page of the claim form, claimants are requested to provide the name of the issuer of the stocks and securities claimed, details of the quantity of stocks, their value on 1 August 1990 and the amount of loss. In its consideration of eight C5-SOS losses in the first instalment, the Panel determined that the limited number of such claims in the first instalment, their diversity and the absence of any specific Governing Council decisions affecting such claims required individual evaluation of each claim. Still, the Panel made some general determinations to be applicable to future instalments.

(i) Fact of ownership

240. To prove the fact of ownership, the Panel determined that claimants should have submitted copies of certificates issued by institutions in which or with which, they had made investments, together with correspondence concerning any settlements offered by the institutions in respect of the investments. In the case of bearer instruments such as checks, claimants should have submitted copies made out in their favour.

(ii) Fact of loss and causation

241. The Panel held that claimants must prove the fact of loss of the stocks or securities that are the subject matter of the claim, by submitting correspondence with the issuing house in which or with which they had an investment. The correspondence should acknowledge the loss of the investment. The Panel found that personal statements of the claimants were sufficient to prove causation. However, the claimant had to show that the loss claimed was suffered directly by the claimant, rather than indirectly, e.g., through a loss in value of the shares or the investment because the company in which the claimant had invested had itself suffered losses as a result of Iraq's invasion and occupation of Kuwait.

242. The Panel determined further that, subject to proof of ownership and value, the loss of bearer instruments constituted compensable securities

losses.[225] In the case of bearer instruments, claimants were required to explain why the loss was incurred.

(b) Commission jurisprudence since the first instalment

243. The "D" Panel considered claims for stocks and securities in part one of its second instalment.[226] The "D" Panel denied three claims arising out of equity investments in Kuwait, in part because the claimants had already accepted settlements in respect of the diminution in the value of their investments.[227]

(c) Findings of the Panel for C5-SOS losses in the seventh instalment

244. There were approximately 1,800 category "C" claims with C5-SOS losses when reviews of this loss element began. Claimants requesting compensation for C5-SOS losses were overwhelmingly from Jordan, Egypt, India, Pakistan and Bangladesh. Sampling projects were therefore implemented for these claimant groups. The reviews determined that the majority of C5-SOS entries were erroneous.[228] Claimants most often claimed for lost or stolen cash, gold, losses in forced currency conversions, prepaid rent, fees paid in respect of deposits for telephone or electricity service, and employment-related pension funds or other benefits. Most claims were generally reclassifiable to other loss elements, primarily to C4-CPHO and secondarily to C6-Salary losses.

245. Where bearer instruments such as checks were presented, the Panel considered the type of check (cashier or bank draft versus third party personal check) and the date on the face of the check to be determinative factors. Where a check had been issued shortly prior to or shortly after 2 August 1990, the presumption was that the check's non-negotiability related directly to the invasion and occupation of Kuwait.[229] In several situations involving bearer instruments, the C5-SOS amounts were related to business operations of the claimants and thus were recategorised as C8 business losses or added to existing C8 business loss amounts. Still, some few valid and compensable C5-SOS losses were found among the sampled claims and, where appropriate,[230] were recommended to receive compensation to the extent that primary evidence of valuation in support of the losses was provided.

246. General conclusions could not be drawn in respect of the claims that were not sampled. However, because results of the samples determined that claimants had typically incurred some pecuniary losses no matter how they were described, and because the majority of such losses could be recategorised as C4-CPHO losses, the Panel determined that, where claimants from Jordan, India, Pakistan and Bangladesh had not already claimed for C4-CPHO losses, amounts claimed for C5-SOS losses should be recategorised to C4-CPHO losses and awarded compensation in accordance with the C4-CPHO methodology.

247. Claims for C5-SOS losses were manually reviewed on an individual basis for all submitting entities other than Jordan, Egypt, India, Pakistan and Bangladesh. While the trends identifiable among the larger submitting countries were to a large extent duplicated among smaller submissions and C5-SOS losses were recategorised accordingly on an individual basis, some valid and compensable C5-SOS losses were identified. Each such loss was resolved on the merits of the evidence presented and valued in accordance with the primary evidence submitted in support of the loss.

(d) Claims for C5-SOS losses in the seventh instalment

248. The Panel has therefore considered and resolved all claims submitted for C5-SOS losses, either by recategorizing the losses to other loss elements or by resolving them in accordance with their individual merits. Of the 1,392 C5-SOS losses included in the seventh instalment, the Panel has recommended full or partial compensation in 102 claims and has not recommended compensation in 1,290 claims. Including the eight claims in the first instalment, the Panel has resolved a total of 1,400 claims for C5-SOS losses.

F. Loss type "C6": damages arising from loss of income, unpaid salaries or support

249. Pursuant to decision 1, claims may be made for lost wages or salary, support, and other employment-related losses. Moreover, decision 8 enables claimants to submit claims for MPA resulting from the deprivation of all economic resources so as to threaten seriously their survival and that of their spouses, children or parents, in cases where assistance from their Governments or other sources has not been provided. All employment-related losses may be submitted on page "C6" of the claim form. However, other than the claims for employment-related support and MPA that were considered in the first instalment, until the seventh instalment, the Panel has concentrated on issues relating to salary and other income losses.

1. Losses relating to unpaid salaries and other income ("C6-Salary" losses)

(a) Findings of the Panel in the first instalment

250. During its deliberations in respect of unpaid salaries and other income ("C6-Salary") losses, the Panel considered the extensive expatriate workforces in both Iraq and Kuwait, reflecting a wide variety of nationalities and cultures, as well as differing educational and professional levels.[211] In all, the Panel considered 1,092 claims relating to losses of salary and wages and 524 claims relating to other employment-related losses in the first instalment.

251. On the "C6" page of the claim form, claimants were requested to provide certain basic employment-related information relevant to verifying the fact of employment and the value of the losses. They were requested to indicate whether they had an employment contract, the name of the employer or employing organization, their employee identification number, the address and telephone number of their former employer and the length of time they were employed. They were also requested to state their monthly salary prior to the invasion.

252. In respect of this last, however, and reflecting employment practices in Iraq and Kuwait, a significant number of claimants indicated not only the salary or wage component of their income, but an amount which included allowances and benefits. Claimants who desegregated the salary or wage component of their incomes, typically claimed for their benefits and allowances separately in the field for "Other" employment-related losses, or even in the field for "Support" claims. Therefore, unless claimants had provided a specific itemization of the elements comprising their claim in a statement or the information could be ascertained from the documentation submitted in support of the claim, the Panel was generally unable to determine which components of a claimant's remuneration were reflected in the pre-invasion monthly or annual salary fields.

253. The Panel noted that employment-related claims comprised very different types of losses, often arose out of very different factual circumstances, and raised legal and valuation issues specifically relevant to the particular type of loss. Considering these losses to be among the most complex to be processed and that they did not lend themselves easily to mass claims processing procedures, the Panel adopted a methodology entailing (a) the review of sample claims; (b) the use of statistical data regarding the patterns of evidence and the amounts claimed; (c) a detailed study of employment-related legislation, international standards and factual information regarding employment practices in Iraq and Kuwait; and (d) the computerized application of a compensation formula based on all factors considered.[231]

(i) Proof of fact of employment

254. The Panel first considered whether claimants had established the fact of their employment either in Iraq or Kuwait or in a third country. The Panel took into account that the vast majority of claimants had responded with information that could be verified, submitted documentation in support of their employment in the form of work permits, visas, employee identification cards, civil identification cards, and could only reside legally in Kuwait if they were sponsored, most generally by an employer. The Panel also found it reasonable to presume that expatriates who were resident in Iraq prior to the invasion were there primarily for the purposes of employment. Thus, the Panel concluded that if a claimant had established the fact of residency in Iraq or Kuwait prior to the invasion

and had provided some information confirming the fact of that employment, the claimant had proven the fact of employment in Iraq or Kuwait. [233]

(ii) Proof of causal link to the invasion and occupation

255. To the extent that an individual claimant had established the fact of residence in Iraq of Kuwait at the time of the invasion, the Panel found it likely that the claimant's employment-related losses resulted directly from the events surrounding the invasion and occupation of Kuwait. Thus, in the absence of evidence to the contrary, the Panel found it appropriate to apply a general presumption that the employment-related losses suffered by such a claimant were directly related to Iraq's invasion and occupation of Kuwait. However, the Panel also found that claimants who were employed in locations other than in Iraq or Kuwait could not benefit from the same presumption. [234]

(iii) Valuation of compensable claims for C6-Salary losses

256. Having accorded general presumptions to claimants in respect of being employed and having incurred losses related to that employment as a direct result of Iraq's invasion and occupation of Kuwait, the Panel also determined that all first instalment claimants could be deemed to have proven their asserted monthly or annual salary, wages, or income, under the terms of decision 1. [235] However, it could not make the same determination in respect of the proof offered in support of the employment-related losses. Even in instances where claimants had provided material and relevant evidence, the evidence often either did not support the amount claimed or the various elements upon which the amount was based, being probative only of one aspect of the loss. Therefore, the Panel determined that it could not rely on the documentation submitted to value the losses.

257. The Panel therefore considered various international standards and precedents as well as applicable Kuwaiti and Iraqi legislation. It found that a claimant's pre-invasion income reflected a wide variety of employment-related factors including: the remaining portion of a fixed-term contract, unpaid remuneration, allowances and benefits, holiday pay, end-of-year and other bonuses, payment in lieu of notice of termination of employment, severance pay and end-of-service indemnities and gratuities. Bearing in mind that a manual review of each income loss claim was not a viable option, the Panel found that the pre-invasion monthly income, as stated by the claimants, should be the point of departure for determining compensation. The Panel also noted that such compensation had to take into account the obligation of claimants to mitigate their losses. [236]

258. Therefore, taking into consideration all of the various criteria and the relative weight to be accorded to each, the Panel determined that a multiplier of seven should be applied to the claimant's asserted prior monthly salary, wage or income in order to determine the amount of

compensation awardable to claimants for wages and salary losses. Further, where separate claims were made by claimants for other employment-related losses, the amounts were factored into the calculation of the compensation awardable to claimants for their wages and salary loss claim. [237]

(b) Evolution of C6-Salary methodology since the first instalment

(i) Limitation of the multiplier result in claims for C6-Salary losses with prior monthly salaries in excess of US$750

259. The valuation methodology established by the Panel for C6-Salary claims in the first instalment applied a limit to the compensation recoverable by higher income claimants by awarding them the lesser of the amount resulting from the application of the multiplier of seven and the claimant's total amount claimed for C6-Salary losses. [238] Aware, however, that a large number of claims for wages and salary losses were submitted in category "C", the Panel noted that it would review the methodology developed in the light of evidentiary and other characteristics of future instalments of such losses. [239]

260. Accordingly, in its review of C6-Salary losses in the second instalment, the Panel conducted an extensive analysis to ascertain the level of evidence in support of C6-Salary claims, to assess the appropriateness of the seven multiplier, and to determine whether modification of the compensation cap level was warranted. Thus, based on the analysis of a statistical data-set composed of 60,374 C6-Salary claims, representing all submitting Governments and international organizations, the Panel was able to reach certain conclusions about the entire population of C6-Salary claims.

261. The Panel considered that approximately 60 per cent of the claimants in the data-set were found to have a monthly income below US$750, that over 92 per cent of claimants in the data-set submitted some form of evidence in support of their claims in addition to the claim form, that the level of evidence generally improved in proportion to the level of income claimed, and that many claimants in the low income group appeared to have considerable difficulty in expressing their income losses. Even then, many had submitted evidence of probative value. Moreover, the sampling results suggested that the Panel's valuation standard was not only efficient but constituted a reasonable and fair measure of the income losses incurred by the claimants. However, bearing in mind the distribution of monthly incomes and amounts claimed in the sample, the Panel found it appropriate to cap the compensation for claimants with monthly income levels above the low income cut-off level of US$750 per month.

262. Thus, in its second instalment, the Panel determined that, of the claimants qualifying for compensation for C6-Salary losses, those with pre-invasion monthly incomes exceeding US$750 should be awarded the lesser of

(a) the amount resulting from the application of the seven multiplier to their monthly income or (b) their total claimed income loss. Given that many of the claimants who earned US$750 or less per month appeared to have had difficulty in expressing their losses, and were among the lowest paid workers in Iraq and Kuwait, these claimants were compensated at the amount resulting from the multiplier formula without being subject to a cap. [240]

(ii) Considerations in respect of certain claims for C6-Salary losses with country of employment other than Iraq or Kuwait

263. The Panel had accorded presumptions both in respect of fact of loss and causation to claimants with C6-Salary losses who had proven that they were resident in Iraq or Kuwait prior to the invasion. However, for claims based on employment relationships not situated in Iraq or Kuwait to be considered compensable, the Panel determined that a claimant had to make a specific showing, substantiated by appropriate evidence that (a) the claim arose out of economic activity having a direct relationship with Iraq or Kuwait, or (b) the claimant's employment was directly affected by the Iraqi invasion and occupation of Kuwait. [241]

264. In the sixth instalment, the Panel considered approximately 2,000 claims with C6-Salary losses where the "country" field on the "C6" electronic page indicated that the location of employment was other than in Iraq or Kuwait. At that time, the Panel found that if claimants in such cases could establish the fact of prior residence in either Iraq or Kuwait by clear and convincing proof, the preponderance of the evidence would weigh in the claimant's favour and would support the compensability of a claim for C6-Salary losses, notwithstanding that the country of employment was stated as other than Iraq or Kuwait. Further, the fact of residence could be considered proven by the presence of a Kuwaiti civil identification number or an Iraqi residency permit number in the field provided for such data in the claim form. Additionally, the Panel held that those persons whose claims indicated that they had been held hostage in Iraq or Kuwait as a result of the invasion and occupation of Kuwait and who had, as a result, incurred employment-related losses because of Iraq's interference with their employment relationship could be compensated for C6-Salary losses claimed in accordance with the C6-Salary methodology. [242]

265. The Panel determined that those claimants who failed to establish the fact of residence in Iraq or Kuwait or the fact of direct interference with an employment relationship located outside Iraq or Kuwait were not eligible for compensation for C6-Salary losses. [243]

(iii) Additional use of statistical tools in C6-Salary losses

a. Determining prior monthly salaries in claims for C6-Salary losses

266. Application of the seven multiplier methodology to value C6-Salary losses required that the pre-invasion monthly salary be asserted by the claimant. Most often, if the claimant had not provided this amount in the claim form, it could be ascertained from documentation in the claim file during the secretariat's entry of claims into the database. The secretariat also undertook subsequent review projects specifically to address this situation among claims where monthly salary amounts had not been asserted. However, since the Government of Egypt had submitted claims directly to the Commission in electronic format, it had not been included in the secretariat's review projects. Therefore, in its fifth instalment, the Panel considered the issue of approximately 16,000 claims submitted by the Government of Egypt. All requested compensation for C6-Salary losses but had no amounts asserted in the pre-invasion monthly salary field of the electronic claim upon which to base the seven multiplier calculation.

267. The Panel considered its successful use of statistical models to value C1-Money and C4-CPHO losses, as well as its use of statistical analyses in confirming the effectiveness of the seven multiplier methodology. It further considered that a manual review of high numbers of claims was not feasible in the context of a mass claims processing programme and that this issue involved a largely homogeneous claimant population. Therefore, the Panel determined that a sample review be conducted for Egyptian claims with C6-Salary losses that did not have prior monthly salary amounts asserted, in order to ascertain monthly salaries from sample claims and extrapolate the results to the entire population. A linear regression model was developed from the sample results and used to predict the missing monthly salaries for the claim population.[144] The prior monthly salary supplied by the model was then used in the regular C6-Salary seven multiplier methodology, with the compensation cap applied to prior monthly salary amounts over US$750.

b. Determining total C6-Salary amounts claimed where the asserted prior monthly salary was in excess of US$750

268. As noted earlier, in its second instalment, the Panel had determined that claims with asserted prior monthly salaries less than US$750 would receive the full benefit of the seven multiplier methodology. Thereafter, the secretariat routinely applied the multiplier of seven to such claims without taking the total amount claimed into account. However, certain claims with monthly salaries in excess of US$750 could not be processed as they were because there was no amount against which the multiplier result could be compared and, where applicable, limited. After the results of an electronic survey which indicated that claimants in such situations provided enough information on the "C6" page to create a presumption that they could confirm the fact of their employment in Iraq or Kuwait, the

Panel, in the sixth instalment, authorized the use of statistically derived average recommended amounts to serve as a comparison and, where appropriate, limitation to the result of the seven multiplier.[245] These amounts were then deemed to be the aggregate "salary and wages" and "other" amounts for these claims so that the claims could be processed.[246]

c. Findings of the Panel in the seventh instalment

269. In its continuing review of claims for C6-Salary losses where the country of employment was located outside Iraq or Kuwait, the Panel came to conclusions in this seventh instalment affecting certain groups of similarly-situated claimants.

i. Claimants whose country of employment was Israel or Saudi Arabia and "military operations or threat of military action"

270. Pursuant to decision 1, claims may be made for employment-related losses as a result of, inter alia, "military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". The phrase "military operations or threat of military action" has been extensively discussed in at least three reports by other Commission panels in relation to the issue of direct causation.[247]

271. The Panel of Commissioners for "F1" claims ("the "F1" Panel") considered the phrase in connection with the reimbursement of evacuation costs. After requesting that the secretariat undertake research, inter alia, on the range and use of Scud missiles during the period of Iraq's invasion and occupation of Kuwait and the location of any military actions that were conducted by either side in countries other than Iraq and Kuwait, the "F1" Panel concluded that "military operations or [the] threat of military action" were directed against Saudi Arabia and Israel in addition to Iraq and Kuwait. Not only had Iraqi ground forces actually crossed the Saudi Arabian border and engaged the Saudi Arabian and Allied Coalition Forces in combat, but Saudi Arabia and Israel had both been subjected to a series of Scud missile attacks launched by Iraq. Consequently, the "F1" Panel determined that costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait.[248]

272. The "E2" Panel reiterated the findings of the "F1" Panel in respect of Saudi Arabia but distinguished the causal inquiry for losses suffered outside Kuwait "simply because Kuwait was actually invaded and occupied by Iraqi forces while Saudi Arabia was not".[249] Therefore, the "E2" Panel concluded that claimants seeking compensation for losses or damage arising out of military operations in Saudi Arabia must make a specific showing that the losses or damage resulted from a specific military event or

events. If such a showing was made, the "E2" Panel concluded that the claimants would have established the requisite causal link between the loss or damage and Iraq's invasion and occupation of Kuwait. [250] More recently, the "E2" Panel found that losses suffered in Israel from 15 January to 2 March 1991, were the direct result of the credible and serious threat of military action directed at Israel that was intimately connected to Iraq's invasion and occupation of Kuwait. [251]

273. In the context of this report, the "C" Panel considered 377 claims for C6-Salary losses where claimants had been identified as being resident and employed in Israel and in Saudi Arabia prior to Iraq's invasion and occupation of Kuwait. The "C" Panel considered the findings and conclusions of the "F1" Panel, that both countries had been targets of Iraqi military actions, specifically Scud missile attacks, during the occupation period. The "C" Panel further considered the findings and conclusions of the "E2" Panel in respect of its requirement to show a causal link to Iraqi military operations and requested that the secretariat review the claims.

274. The secretariat reviewed a representative sample of 89 claims from both countries. Claimants residing in Saudi Arabia were predominantly from the Philippines, India and Thailand, whereas claimants residing in Israel were Israeli citizens. At least 82 per cent of claimants in the sample provided evidence in support of their C6-Salary losses. Most claimants claimed for lost salary for a period of three to five months, most generally corresponding to the three-month period of January to March 1991 when Iraqi military operations against both Israel and Saudi Arabia actually took place. Further, using an electronic survey to ascertain claimant locations, the secretariat was able to identify the areas in Saudi Arabia and Israel where all 377 losses occurred. In each case, geographical locations corresponded to sites of well-documented reports of Iraqi military operations or Scud missile attacks.

275. Considering the language of decision 1, the findings of the "F1" Panel, the findings of the "E2" Panel and the results of the reviews conducted by the secretariat for these claimants, the Panel determined that the claimants had established the requisite causal link to "Iraqi military operations or threat of military action" and should be compensated in accordance with the Panel's C6-Salary methodology. [252]

ii. Claimants who were prevented from going to Iraq for employment as a result of Iraq's invasion and

occupation of Kuwait and subsequent military actions or threat of military actions or the breakdown in civil order during that period

276. The Panel determined that military operations or the threat of military action by Iraq could be of consideration in determining whether claimants' employment-related losses arose directly from Iraq's unlawful invasion and occupation of Kuwait in two other situations. In each situation, the claimants had been contracted, for several months in advance in some cases, to report for employment in Iraq on or around August 1990. The claimants in question had made expenditures and otherwise planned their lives in anticipation of their departure and subsequent employment in Iraq. In each situation, the employer was the Government of Iraq.

277. The first situation concerned approximately 2,700 claimants from Pakistan who had been engaged through a recruiting contractor to participate in a series of construction projects in Iraq and whose contracts were scheduled to commence on or around August 1990. The second situation concerned nine claimants from Poland who had initially been scheduled to report for work in Iraq in July 1990, but whose departure had been postponed by Iraq until August 1990. In both situations, the claimants claimed for C6-Salary losses only. In neither situation had the claimants been resident in Iraq before Iraq's invasion and occupation of Kuwait took place.

278. The Panel considered that the detrimental reliance of these claimants on their scheduled employment included forsaking positions or employment opportunities in Pakistan and Poland. The Panel also considered the fact that the employing party in each situation was Iraq itself and the fact that Iraq's invasion and occupation of Kuwait raised a credible and serious threat of retaliatory military action in Iraq so as to be a deterrent to travel to Iraq. A subsequent breakdown in civil order in Iraq could be inferred so as to raise serious individual safety concerns. The Panel therefore deemed these losses to be compensable in principle.

279. Because the Panel also recognized that the claimants not only had an obligation to mitigate their damages, but could be deemed to be better placed to do so than those who were resident in Iraq or Kuwait, it determined that they should in all cases be compensated the lesser of (a) the amount claimed, or (b) the amount resulting from the application of the seven multiplier to the monthly salary asserted. In arriving at this decision, the Panel took into account that the largest proportion of these claimants asserted a monthly salary of less than US$750. Because the claimants uniformly claimed for amounts that were less than they would automatically have been accorded under the seven multiplier methodology, the Panel considered these amounts to be the value of their detrimental reliance.

iii. Claimants who were employed in the United Kingdom by an Iraqi state-owned bank

280. In this instalment, the Panel also considered the situation of 27 claimants for C6-Salary losses, all former employees of a London-based branch of an Iraqi state-owned bank, who were made redundant as a result of the cessation of the bank's operations following Iraq's invasion of Kuwait. In this connection, the Panel considered that some of the redundancies occurred as late as July 1993. Claimants submitted personal statements asserting that, as a result of Iraq's invasion of Kuwait, they had been made redundant. They also provided primary documentation supporting their former employment, salary amounts and entitlements claimed.

281. The Panel took into account that these claimants had made specific showings, substantiated by appropriate evidence, that (a) their claims arose out of an economic activity having a direct relationship with Iraq, and (b) their employment was directly affected by the Iraqi invasion and occupation of Kuwait. [253] Although the Panel considered these C6-Salary losses to be generally compensable in accordance with the C6-Salary methodology, it found that those claims for losses after 1991 were too remote and did not meet direct causal requirements as the Panel generally interpreted them.

d. Recommendations for claims for C6-Salary losses in the seventh instalment

282. The seventh instalment includes 37,925 claims for C6-Salary losses. Of that number, 36,597 have been recommended for compensation and 1,328 have not been recommended for compensation. Throughout the category "C" claims programme, of a total of 216,438 C6-Salary losses, 212,200 have been recommended to receive compensation and 4,238 have not.

2. Losses related to support on the "C6" page ("C6-Support")

(a) Findings of the Panel in the first instalment

283. Claimants could also request compensation for loss of employment-related support on the "C6" page. During its review of amounts entered in the "support" field of the "C6" page, the Panel observed that many of the amounts actually represented items that were more properly classified under to the "other" field, e.g., end-of-service gratuities or benefits, perquisites and allowances. Other claimants used the field to claim for support payments received from a family member prior to the invasion, but which they no longer received due to the loss of that family member's employment as a consequence of the invasion and occupation.

284. In view of the diversity of claims submitted as C6-Support, the Panel determined that only claims resulting from the following or similar circumstances should be classified as employment-related support claims:

(a) claims by gainfully employed persons whose ability to work had been permanently or temporarily affected as a result of a permanent or temporary disability or other injury;

(b) claims by persons who were not employed, but who, as a result of a permanent disability, might never be able to be fully employed;

(c) claims by family members of wage earners in Kuwait or Iraq, who were unable to continue making certain payments such as alimony, regular dependent payments, subsistence payments, etc. to those family members, due to having lost their employment as a result of Iraq's invasion and occupation of Kuwait, or as the result of some permanent or temporary disability.[254]

285. Claims arising out of factual circumstances other than those identified in paragraph 284 _supra_, were reclassified as more appropriate loss elements. As a result, only five claims were considered as true C6-Support losses and were addressed in the first instalment. The Panel considered each case on its merits. Thus, the specific evidentiary items submitted by the claimants relevant to establishing their entitlement to compensation for lost support were dispositive in each situation.

(b) _Jurisprudence of the Commission in respect of employment-related support losses_

286. The "D" Panel considered loss of employment-related support in its first instalment and observed confusion among "D" claimants similar to that observed by the "C" Panel among "C" claimants. It therefore made no specific findings and evaluated claims for "support" as "loss of income" claims.[255]

(c) _Findings of the Panel in the seventh instalment_

287. Since the first instalment, the majority of claims originally submitted as C6-Support losses have routinely been reclassified as C6-Other and thereafter included in the C6-Salary methodology.[256] Exceptions occurred only (a) where the "support" amount was clearly identifiable as a second employment for the claimant or the separate employment of a spouse, or (b) where the losses resulted from the circumstances enumerated by the Panel in paragraph 284 _supra_ and could thus be considered as true claims for C6-Support losses.

288. In the first exception, if it was ascertained that the claimant intended to claim for lost salary from a second employment, the loss was

considered as a second C6-Salary claim, and the claimant was compensated in accordance with the C6-Salary methodology. However, if it was ascertained that the "support" amount pertained to the employment of a spouse, it was necessary to set the claim aside as a "multiple" claim until issues of duplicate recovery could be reviewed.[257]

289. For the comparatively small number of true candidates for C6-Support losses, a review of the claims led the Panel to observe that its original C6-Support categories could be expanded to include:

(a) claims by family members who, prior to the invasion, had been receiving death benefits on behalf of a deceased family member;[258]

(b) students who had lost scholarship grants for study in Kuwait; and

(c) students who had been receiving tuition assistance for education in third countries from public or private entities based in Iraq or Kuwait.

290. The Panel determined that to the extent claimants could establish their entitlement to C6-Support, the fact of its loss and that the loss was attributable to Iraq's invasion and occupation of Kuwait, their losses were deemed to be compensable. The Panel determined further that, valuation of C6-Support losses should be computed by taking the stated or ascertained value of the monthly support amount and computing a recommended award amount in accordance with the C6-Salary methodology with one modification. In view of the fact that claims for C6-Support could not be presumed to include the same entitlements as did claims for C6-Salary, the C6-Support amount awarded was always capped at the lesser of (a) the amount claimed by the claimant, or (b) the amount calculated by the application of the seven multiplier to the prior monthly support amount.

(d) Recommendations for claims for C6-Support losses in the seventh instalment

291. There are 819 claims for C6-Support losses that were considered in this instalment. The Panel recommended compensation for 817 claims and did not recommend compensation for two others. In total, the Panel considered and resolved 822 claims for C6-Support losses.

3. Claims for MPA on the "C6" page ("C6-MPA")

292. Decisions 3 and 8, taken together, define and propose a compensation ceiling amount of US$2,500 per claimant and US$5,000 per family for situations where it can be demonstrated that an individual or family was deprived of all economic resources so as to threaten seriously the survival of the claimant and all eligible dependents (spouse, children or parents),

in cases where assistance from the claimant's Government or other sources had not been provided. Claimants could indicate that they were making such claims by ticking the appropriate box on the "C6" page. The instructions on the claim form clearly provide that "[s]uch claims must be substantiated by documentary and other appropriate evidence".

(a) Findings of the Panel in the first instalment

293. In the first instalment, the Panel considered 52 claims for C6-MPA. In its consideration of such claims, the Panel determined that, for a claim to be considered compensable, it should be clearly observable from the claim form and the attached documents that (a) the claimant was deprived of all economic resources; (b) such deprivation of economic resources seriously threatened his or her survival and that of his or her family; (c) the claimant did not receive or was not entitled to any form of assistance from public or private sources (e.g., social security or other Government aid, room and board with a family member, etc.) and (d) the resulting MPA occurred during the invasion or after the claimant's departure from Iraq or Kuwait.

294. Relying on advice from a panel of psychiatric experts, the Panel determined further that a claimant should receive the ceiling amount compensable under the criteria of decision 8 (a) if there were one or more dependent family members, including a spouse, children or parents, or (b) if the claimant had suffered a serious personal injury or disease of such a nature as to prevent the performance or exercise of his or her profession or employment. Based on these stated considerations, the Panel arrived at its recommendations for the first instalment.

(b) Findings of the Panel in the second instalment

295. In the second instalment, the Panel observed that claims submitted by Egypt in electronic format uniformly claimed for C6-MPA losses. Sampling projects undertaken by the secretariat compared the paper and electronic versions of the claims and ascertained that there was no indication that claimants had ticked the MPA box on the "C6" page of the paper claims. Nor had they presented documentation in support of C6-MPA losses. These results led the Panel to conclude that the claims for C6-MPA losses had not been intentionally submitted by claimants from Egypt. Subsequent reviews of Egyptian claims in connection with non-fast track losses and other issues have served only to confirm this conclusion. Therefore, since the second instalment, compensation for C6-MPA losses submitted by Egyptian claimants has routinely been rejected.

(c) Findings of the Panel in the seventh instalment

296. The Panel considered approximately 800 claims for C6-MPA losses in the seventh instalment, more than 500 of which were submitted by claimants

from three countries and one international organization: Yemen, Jordan, Bangladesh and UNDP Jerusalem. Of those claimants, most were found to have left Kuwait after 2 March 1991, and generally not as a direct result of the invasion and occupation. Most other claimants for C6-MPA in those same populations had departed from Iraq or Kuwait prior to 2 August 1990. For the approximately 300 claims for C6-MPA remaining, no general departure trend was discernible and each claim was evaluated on the basis of the documentation presented in support of the C6-MPA loss.

297. The Panel observed that most claimants for C6-MPA simply ticked the "C6" MPA box without providing any documentation in support of the loss or describing the circumstances of the loss. Therefore, the presumption was that C6-MPA losses were not generally compensable. However, considering all circumstances applicable, and in an effort to identify claimants who were among the most vulnerable claimant groups and who were most likely to have been without any financial recourse, the Panel determined that a claimant could be presumed to have suffered C6-MPA, even without providing the requested documentary support, in two instances:

(a) where a claimant had submitted a compensable C2 claim for a serious personal injury (dismemberment, disfigurement, loss or limitation of use, sexual assault, aggravated assault or torture) in combination with a claim for C6-MPA; and

(b) where a claimant had departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 and had his claim submitted through an international organization rather than through a Government.

298. In all other situations, the Panel found that, for a claim for C6-MPA to be compensable, the claimant must have manifestly met the requirements specified on the claim form and specified by the Panel in its First Report. Once compensability was demonstrated, claimants were eligible to receive amounts of US$2,500, or, if eligible family members were identified in the claim, US$5,000.[259]

(d) Recommendations for claims for C6-MPA losses in the seventh instalment

299. In the seventh instalment, the Panel considered 13,207 claims for C6-MPA losses. The Panel recommended compensation in 179 claims and did not recommend compensation in 13,028 claims. During the category "C" claims programme, the Panel considered a total of 77,192 C6-MPA losses.

G. Loss type "C7": damages arising from real property-related losses ("C7" real property)

300. Paragraph 14 of decision 1 provides that payments of compensation are available for "losses of income ... housing or personal property" resulting from Iraq's unlawful invasion and occupation of Kuwait. Page "C7" of the

category "C" claim form allowed individuals to submit claims for losses related to real property, including costs incurred for repairing damage and other losses. While the claim form specified "repair costs", it did not specify the nature of other real property-related losses that could be claimed.

1. Findings of the Panel in the first instalment

301. In the first instalment, the Panel considered 35 C7 real property losses. Most were for property located in Kuwait, none were for property located in Iraq and some were for property located in third countries. In arriving at its conclusions in the first instalment, the Panel took into account that ownership of real property in Kuwait is generally restricted to Kuwaiti citizens. [260]

302. The Panel considered the extensive documentation available on damage to real property in Kuwait and noted similarities to the situation of personal property. The main causes of real property losses were the systematic destruction, as well as the looting and vandalism, that occurred during the invasion and occupation period. Additional causes of damage to real property included damages that occurred during the Allied Coalition Forces offensive against Iraq, damage from environmental conditions in Kuwait resulting principally from smoke from burning oil wells, and the cost of clean-up operations in Kuwait following the country's liberation from the Iraqi occupation. [261]

303. Damage and destruction to real property were inflicted on commercial buildings and apartment complexes as well as private residences. Moreover, the mass dislocation of most of the population from Kuwait after the invasion left buildings vacant, where prior to the invasion the occupancy rate for rental property was from 85 to 90 per cent. Thus, early in its first instalment experience with C7 losses, the Panel determined that it would consider claims for losses of rental income in addition to those for repair costs as C7 losses. [262]

304. The Panel noted further that the composition of the C7 losses in the first instalment was rather homogeneous, which permitted the Panel to assess the majority of real property claims on a standardized basis. The Panel's expectation was that homogeneity in respect of this loss would be repeated in future instalments. The relatively low number of claims considered in the first instalment also facilitated a more detailed review of evidence in support of ownership and the amounts claimed. Therefore, to the extent permitted in terms of the scope of the first instalment, the Panel endeavoured to develop criteria that could be applicable to claims in future instalments of C7 claims.

305. To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established: (a)

the fact of ownership of the real properties on which their claims were based; (b) the fact of their losses and that they were causally related to Iraq's invasion and occupation of Kuwait; and (c) the value of their claims.[263]

(a) Fact of ownership of C7 property

306. Virtually all claimants in the first instalment provided evidence in support of the fact of ownership of the real property concerned, providing documents of title, sales contracts, bank documents evidencing loans, lease agreements or documents issued by governmental agencies so that the Panel did not have to consider whether an evidentiary standard reflecting proof of a lesser quality might properly be applied to claims demonstrating particular factual circumstances. The Panel's expectation was that the standard of documentary evidence provided in support of the fact of ownership would be of equally high quality in future instalments.

(b) Fact of loss and causal relation to invasion

307. The Panel found that the assertions of real property damages in the claims for C7 real property losses reviewed fit squarely into the overall pattern of losses suffered as a result of Iraq's invasion and occupation of Kuwait and that the claims as a whole were consistent with the findings and conclusions stated in the United Nations reports and other information sources regarding the damages incurred. Further, the Panel noted that the claim files contained documentation describing the particular circumstances of the losses claimed. In the case of claims for repair costs, the files also included copies of bills, receipts or estimates from expert appraisers, thus generally establishing both the fact and amount of damages. Concerning losses of rental income, claimants explained that rental units had remained vacant for significant periods, due to the departure of former tenants or because units were uninhabitable because they had been damaged during the invasion and occupation period.

(c) Valuation of claims for C7 repair costs

308. The claim form allowed claimants to express their losses from damages to real property on the "C7" page of the claim form in terms of the "estimated cost of repairs not yet completed" and the "actual cost of repair work already completed". The Panel observed that repair costs included costs of labour and materials for repairs to structures. Claimants generally submitted relevant primary evidence in the form of receipts, invoices and copies of bills to document claims for repair already performed and expert appraisals or estimates for repairs not yet performed.

309. In the first instalment, the Panel adopted the following criteria for determining the amount of compensation payable for repair claims for real property located in Kuwait:

(a) claims for repair costs up to US$20,000 [264] must have provided at least a statement in support of the amount claimed that includes (i) a description of the damages, and (ii) an explanation of the costs incurred; and

(b) claims for repair costs for more than US$20,000 must have provided documentary evidence in the form of receipts, invoices, copies of bills or expert appraisals in support of the amount claimed. [265]

(d) Valuation of claims for C7 losses of rental income

310. In its valuation methodology for losses of rental income, the Panel considered that evidence in support of the losses should be reasonably accessible to most claimants, even after the invasion. Thus, sales contracts and title documents establishing ownership, as well as lease agreements documenting the location of the property, the names of the landlord and the tenant, the number of units and monthly rental amounts were considered to be most persuasive. The Panel observed that virtually all claimants for rental income losses had submitted such documentation.

311. In formulating its methodology, the Panel considered several factors particularly relevant. These included: (a) the period of the invasion and occupation during which damages were inflicted and during which many landlords and tenants were absent; (b) a reasonable period immediately thereafter to account for continued vacancies; (c) the need to rehabilitate and refurbish structures and the delays in obtaining necessary materials and labour; (d) basic principles of mitigation in that the claimants should have made reasonable efforts to re-let their rental units; (e) practical considerations involved in mass processing; and (f) concerns of fairness to all claimants and to Iraq in the development of an equitable approach.

312. Taking all of the above factors into account, the Panel determined that compensation amounts awardable in claims for C7 losses of rental income would be determined by applying a multiplier of ten, representing a ten-month period, to the monthly rental rate established for each of the rental units underlying the claim.

(e) Claims for C7 real property losses located outside Kuwait

313. In its review of claims submitted by non-Kuwaitis in the first instalment, the Panel determined that all claimed losses related to the loss of rental income that would have had been received by the claimants from properties in their respective home countries prior to the invasion. The income ceased when claimants relocated to those countries. The losses

were accordingly recategorised and resolved as relocation costs on the "C1" page. Thus, in the first instalment, the Panel found that the real property losses that may be claimed on the "C7" page were effectively limited to real property located in Iraq or Kuwait.[265]

2. Findings of the Panel in the seventh instalment

314. In its consideration of approximately 10,000 claims for C7 real property losses in the seventh instalment, the Panel has found it necessary to modify its first instalment methodology in respect of valuation of losses to take into account the requirements of mass claims processing. Further, the Panel has not only addressed real properties located in Kuwait, but also those located in Iraq and in Israel, in addition to resolving issues concerning claims submitted both by Kuwaiti and non-Kuwaiti nationals. In its seventh instalment review of C7 real property losses, the Panel utilized sampling techniques for Kuwaiti claimants and conducted individualized review in all other cases.

(a) Claims for C7 real property losses located in Kuwait

(i) Claims submitted by Kuwaiti nationals

315. Of the approximately 10,000 claims for C7 real property losses that were considered by the Panel in this instalment, approximately 9,100 were submitted by Kuwaiti nationals. Sample review projects confirmed the trends for this claimant group that were observed by the Panel in the first instalment in respect of proof of ownership, fact of loss and primary documentation submitted in support of C7 real property losses. Reviews of sample claims determined that claims presented were either for repairs, completed or not completed, or for other costs, in addition to rental income. The Panel therefore determined to treat the aggregate "repairs completed" and "repairs not completed" as C7 repair costs ("C7-Repairs") and the aggregate of rental income and other costs as C7 other costs ("C7-Other").

316. Considering that the experience in the first instalment had involved detailed review of these C7 real property losses and that this claimant group was fairly homogeneous, the Panel elected both to extrapolate conclusions from the sample reviews to the Kuwaiti claimant population and to modify its methodologies from the first instalment so that they could be programmatically applied in the context of mass claims processing.

a. Claims for C7-Repairs

317. In consideration of the fact that sample review projects had shown that Kuwaiti nationals claiming in excess of US$20,000 had submitted primary evidence supporting 96 per cent of the amounts claimed for C7-Repairs, and keeping in mind the US$20,000 threshold applied in its first

instalment, the Panel determined that, in the context of mass claims processing, all claims submitted by Kuwaiti nationals for C7-Repairs should be valued in accordance with the following formula:

(a) for an amount claimed less than or equal to US$20,000, the award should equal the amount claimed;

(b) for an amount claimed in excess of US$20,000, the total award should equal US$20,000 increased by 96 per cent of the amount claimed in excess of US$20,000.[267]

b. Claims for C7-Other (rental income and other)

318. Once again, considering the results of sample review projects which demonstrated that Kuwaiti nationals who claimed in excess of US$20,000 had submitted primary evidence supporting 90 per cent of the amounts claimed for C7-Other, and keeping in mind the US$20,000 threshold applied in its first instalment, the Panel determined that, in the context of mass claims processing, all claims submitted by Kuwaiti nationals for C7-Other should be valued in accordance with the following formula:

(a) for an amount claimed less than or equal to US$20,000, the award should equal the amount claimed;

(b) for an amount claimed in excess of US$20,000, the total award should equal US$20,000 increased by 90 per cent of the amount claimed in excess of US$20,000.[268]

(ii) Claims submitted by non-Kuwaiti nationals

319. In spite of restrictions on property ownership by non-Kuwaiti nationals, the Panel determined in three situations that non-Kuwaiti claimants had demonstrated the requisite facts of ownership, loss and causation and recommended that the three claims be awarded compensation for C7 real property losses in accordance with the valuation methodology applied to claims submitted by Kuwaiti nationals as described in paragraphs 317-318 supra.

(b) Claims for C7 real property losses located outside Kuwait

(i) Claims for C7 real property losses located in Iraq

320. The Panel considered four claims for C7 losses that were submitted by non-Iraqi nationals for real property owned in Iraq. Two were submitted by non-Iraqi spouses of Iraqi nationals who claimed essentially for loss of use because they could not return to Iraq to live on the property. However, they did not allege or show in any manner that the property had been damaged or destroyed. The Panel did not recommend compensation in

these situations. A third claimant failed to prove the fact of ownership and did not describe the circumstances of the loss or provide documentation in support of valuation. The Panel therefore did not deem this claim to be compensable. In the final situation, however, a claim was submitted by a non-Iraqi national for property owned in Iraq that had been destroyed as a result of bombing by the Allied Coalition Forces. The Panel deemed this claim to be compensable. However, because the claimant had claimed for approximately US$76,000 but had not provided primary evidence of value, the Panel recommended that his recovery be limited to a maximum amount of US$20,000.

(ii) Claims for C7 real property losses located in Israel

321. As discussed in connection with C6-Salary losses in Israel at paragraphs 270-275 supra, the Panel determined that certain losses had occurred in Israel as a result of Iraq's "military operations or threat of military action", specifically, Scud missile attacks in certain areas of Israel in January and February 1991, and thus could be causally linked to Iraq's invasion and occupation of Kuwait so as to justify an award of compensation.[269] The Panel considered 75 claims for C7 real property losses that were submitted by Israeli claimants. Because the information supplied in the claims was not consistent enough for mass claims processing, each claim was reviewed on an individual basis.

322. During review, claims were recategorized to other loss elements such as C4-CPHO, where appropriate. If claimants could not prove ownership of the real property claimed for, no compensation was recommended. However, where claimants had proven the fact of ownership and it was determined that the real property was located in an area known to have been the site of a Scud missile attack,[270] the Panel considered that the prerequisites for compensation had been met. Compensation was then recommended in accordance with whether the claim was for C7-Repairs or C7-Other losses, in consideration of the primary valuation evidence provided in the claim file, and in consideration of the US$20,000 evidentiary threshold. In all cases where it was determined that claimants had already received compensation, in whole or in part, amounts of such compensation were deducted from the total amount claimed prior to the determination of the compensation amount.

323. Taking all circumstances and review results into consideration, the Panel awarded compensation for C7 real property losses in 66 individual claims where the real properties were located in Israel. In 33 of those claims, the amounts awarded were less than or equal to US$20,000.

(iii) Claims for C7 real property losses located in countries other than Kuwait, Iraq or Israel

324. The Panel reviewed 471 claims for C7 real property losses that were submitted by non-Kuwaiti nationals. The review focused principally on

whether the amounts claimed for C7 losses had been entered in error and would thus require recategorization to another loss element. The review determined that, in 74 per cent of the claims reviewed, the loss amounts were intended to be C8 business losses, C4-CPHO, C6-Salary, C5-bank account or securities, or C1-Money and reflected erroneous interpretations by the claimants. Thus, amounts were transferred in accordance with the nature of the loss claimed, providing that the amounts did not already exist in the correct loss category. For 85 claims reviewed, the Panel recommended neither transfer of amounts nor compensation as C7 real property losses.[71]

325. Of ten claims that were properly submitted for C7 real property losses by non-Kuwaiti nationals, the Panel determined that none was compensable as a C7 loss. The situations identified by the Panel as noncompensable included: (a) selling real property at a lower than market price due to financial need; (b) asserted inability to pay a mortgage or property-related loan that led to foreclosure; (c) inability to finish remodelling or repairs due to cessation of income; and (d) foregone rental income because of forced sale of property. In each of these situations, however, the Panel determined that, to the extent the amounts claimed were not already included in appropriate related categories such as C1-Money, C4-CPHO, or C6-Salary, they could be incorporated into the total amounts claimed for one of those losses and be valued in accordance with those methodologies.

(c) Recommendations for claims for C7 real property losses in the seventh instalment

326. In the seventh instalment, the Panel considered 16,443 claims for C7 real property losses. The Panel recommended compensation in 11,884 claims and did not recommend compensation in 4,559 claims.

H. Loss type "C8": damages arising from individual business losses ("C8-Business")

1. Legal framework for consideration of C8-Business losses

327. Paragraph 5 of decision 1 provides that business losses of individuals may be submitted under the expedited procedures set forth therein. Further, decision 4 describes the business losses of individuals that are eligible for consideration under the expedited procedures. Decision 4 provides that claims for business losses are compensable when they occurred under circumstances in which, among others, a claimant was prevented access to the business, and in which removal, looting and destruction of the business premises, equipment and stock took place. It thus provides that claims may be made for loss of tangible assets, damage to intangible assets, loss of business income and losses in connection with business contracts, if those losses resulted directly from Iraq's invasion and occupation of Kuwait.

328. Decision 9 describes the types of business losses that could have directly resulted from the invasion, discusses the applicable legal principles for such loss types, defines Iraq's liability therefor, and provides guidance for valuation methods. Finally, decision 15 stipulates that losses actually suffered as a result of Iraq's invasion and occupation of Kuwait that would have been suffered, irrespective of the trade embargo, are compensable.[172]

329. Individuals seeking compensation for their business losses submitted claims in category "C" by completing the "C8" page of the category "C" claim form. Claimants were requested to provide the following identifying data: (a) the name and address of the business; (b) the name under which the business license was held; (c) the country of the business, Kuwait, Iraq or other; (d) the business identification number; (e) and the Chamber of Commerce identification number. Claimants were also requested to indicate the legal status of the business, selecting among proprietorship, partnership, corporation or joint venture,[173] to state the number of years in the business and to indicate whether the business had resumed functioning. Finally, the form instructed claimants (a) to describe the circumstances of the loss and the steps taken to mitigate damages, and (b) to submit appropriate documentary evidence supporting the calculated value of loss.

2. Findings of the Panel in the first instalment

(a) Composition of claims considered in the first instalment

330. The Panel's findings and processing methodology in the first instalment were, to a certain extent, driven by the claims themselves. In the first instalment, the Panel considered a total of 134 claims for business losses, from six submitting countries. Of this number, 125 claims were from Pakistan.[174] The fairly homogeneous composition of the claims permitted the Panel, notwithstanding the potential diversity and complexity of this loss element, to assess the majority of business claims in the first instalment on a standardized basis. In addition, the relatively low number of claims for C8-Business losses in the first instalment facilitated a detailed review of the evidence in support of the claims.

(b) Business practice in Kuwait and the "rent-a-permit" system

331. At the outset, the Panel considered relevant background facts about the business climate, activities and practices in Kuwait.[175] The Panel found it significant that the most common form of business in Kuwait was the sole proprietorship or "establishment", which was primarily used for small businesses, and which had no separate legal identity. Kuwaiti law requires that a person who wishes to start a business must obtain a permit from the Ministry of Commerce and Industry. In principle, only Kuwaiti nationals qualified for such a license.[176] Therefore, in respect of the

general background information concerning the business environment in Kuwait, the Panel took particular note of the existence of a common practice whereby a person who wished to undertake commercial activities rented a permit from a Kuwaiti permit holder. The widespread use of these "rent-a-permit" arrangements allowed many non-Kuwaiti nationals to engage in commercial activities in Kuwait. [277] This informal permit system adversely affected the general ability of non-Kuwaiti claimants to provide documentary evidence in respect of the existence of the business and its ownership.

332. The Panel also took note of other significant business practices in Kuwait such as the prevalence of cash-based transactions, the reliance on verbal agreements as opposed to written contracts and the absence of taxes or provisions for insurance, all of which served as disincentives to maintaining written records, particularly for most small businesses. However, the Panel observed that damages to businesses in Kuwait had been extensively documented both in United Nations-sponsored reports and in submissions made by and reports prepared on behalf of the Government of Kuwait. Taken together, such sources provided a comprehensive picture of the widespread destruction visited upon nearly every sector of the Kuwaiti economy.

(c) Erroneous completion of claim form

333. The Panel noted that a sizeable number of claimants seeking compensation for C8-Business losses appeared to have misinterpreted the claim form and had recorded the losses on one or several inappropriate loss pages, frequently in combination with other losses. Claimants had also included the C8 amounts as a "claim for other damages" ("CS-Other") on the claim form summary page. Thus, a number of the claims for C8-Business losses had to be recategorized in order to reflect what the Panel believes to have been the claimant's intent.

(d) Criteria for compensability in the first instalment

334. The Panel developed certain criteria to determine compensability of claims for C8-Business losses: (a) the existence of an operating business; (b) the eligibility of the claimant to claim in category "C"; (c) the fact of ownership; and (d) the fact of loss and its causal relationship to the invasion. If all of these criteria were met, a claim for C8-Business losses was deemed by the Panel to be compensable. [278]

(i) Existence of an operating business

335. Given the circumstances of the invasion and occupation, the general circumstances of the business environment in Kuwait and the existence of quasi-legal and unofficial relationships for conducting business, the Panel recognized that individual claimants for C8-Business losses were at a particular disadvantage in furnishing specific evidentiary items to prove the existence of their business. Most claimants submitted a brief statement to the effect that they were operating a business. The Panel was also able to ascertain information from the claim forms such as the name of the sponsor, the address of the business, the name of the license holder, the business identification number, the Chamber of Commerce identification number, and the claimant Kuwaiti civil identification number. The Panel considered, as it had in connection with C6-Salary losses, that it was generally impossible for non-Kuwaitis to reside in Kuwait without employment. It therefore determined that all data mentioned, taken together, may be deemed to constitute evidence of the business.

(ii) Eligibility of the claimant

336. In order for the claimant's C8-Business loss to be eligible for compensation, decision 4 stipulates that it must be submitted on behalf of an unincorporated business, such as a sole proprietorship or certain forms of partnership. The Panel observed that many claimants in the first instalment either indicated that their business was a sole proprietorship or did not indicate the business status at all. Thus, in addition to considering all information before it, the Panel also considered external background data in respect of particular categories of claimants and types of business with which claimant groups were generally associated. Considering all information and circumstances, as well as the information provided in the claim forms and files, the Panel was satisfied that, with one exception, [illegible] all claimants in the first instalment were eligible to submit their C8-Business losses in category "C".

(iii) Ownership

337. The claim form did not stipulate that the claimant must submit evidence establishing ownership of the business at issue. However, the Panel determined that the very submission of claims for C8-Business losses implied an assertion of ownership and could be taken as personal statements to that effect. [illegible]

(iv) Fact of loss and causation

338. Following a comparative analysis of all claims in the first instalment, particularly in the light of the types of business activities represented therein, the Panel found that the claims were predominantly based on the loss of tangible assets. A much smaller group of claimants sought compensation for various forms of lost business income. Implicitly, claimants contended that the assets of their businesses, mostly consisting

of equipment and inventory, had been destroyed or lost through actions by Iraq.

339. Nearly all of the asserted damages relating to businesses established in Kuwait fit squarely into the overall pattern of business losses suffered as a result of Iraq's invasion and occupation of Kuwait and, as a whole, were consistent with the extensive documentation for such losses that had been compiled by United Nations-sponsored and other missions. The Panel therefore considered such general documentation to be appropriate as supplemental evidence and was satisfied that the fact of loss and its attributability to Iraq had been established for the majority of claimants, particularly in respect of claims for loss of physical assets.

340. The Panel acknowledged, however, that claims based on the inability of a business to collect its receivables presented more complicated questions of causation. In assessing such claims therefore, the Panel considered, _inter alia_, the date on which the debt became outstanding and the results of efforts to obtain payment.

(e) Valuation in the first instalment

341. The Panel concluded that various other data indirectly lent credibility to the overall losses asserted by the claimants, some within the claim form, some contained in the documentation submitted with the claims, and some included within available external data, such as statistics regarding the average length of stay in Kuwait. In view of the limited number of claims for C8-Business losses in the first instalment, the Panel did not therefore provide general valuation criteria, but determined compensation based on individual review of the circumstances of each claim. However, to facilitate a standardized processing method, the Panel took its guidance from "the reasonable minimum that is appropriate under the circumstances involved" language of decision 1 and applied a more exacting standard of evidence to claims of US$20,000 and over. Of the 133 claims for C8-Business losses that were compensated in the first instalment, 114 were awarded amounts less than or equal to US$20,000 and 19 were awarded amounts less than US$50,000.

3. Findings of the Panel in the seventh instalment

342. In its consideration of nearly 15,000 claims for C8-Business losses in the seventh instalment, the Panel first addressed questions in respect of claimant eligibility and location of the business.

(a) Eligibility of claimants

343. Decision 4 identified the business losses of individuals which were eligible for consideration under the expedited procedures of category "C" by providing, inter alia:

> "(a) The owner of a single proprietorship may claim for his business losses.
>
> ...
>
> (c) Losses suffered by a partnership which has no separate legal personality must, in principle, be claimed jointly by all partners."

344. Decision 4 also identified which business losses were not eligible for consideration in category "C" by providing that losses suffered by a business entity that has separate legal personality must, in principle, be claimed by the entity, but on another claim form.

345. Considering the jurisdictional concerns of decision 4, the Panel first requested the secretariat to review 150 claims for C8-Business losses that had been identified in the database via electronic survey as having separate legal personality. The review ascertained that 103 of those claims contained positive evidence of corporate status in the form of articles of incorporation, corporate registration of the business or other indications of separate legal personality.[281]

346. In accordance with decisions 1 and 4, the Panel found that the C8-Business losses in these claims were not eligible for expedited consideration in category "C". They have therefore been rejected as C8-Business losses. To the extent that the claimants submitted claims for other losses in category "C" for which they were eligible to receive compensation, the Panel considered those losses in accordance with its criteria therefor. The results have therefore been reported in this instalment. However, the Panel also recommended that the Executive Secretary arrange for the transfer of the ineligible C8-Business loss portions of the 103 claims to category "E", in accordance with article 32(3) of the Rules.

(b) Situs of the business outside Iraq or Kuwait

347. The Panel considered that the situs of a claimant's business was directly relevant to the C8-Business loss claimed for. Businesses situated outside Iraq and Kuwait that nonetheless incurred losses in Iraq or Kuwait could have certain presumptions arise concerning Iraqi causation in respect of those losses. The Panel generally found that where an individual's business losses took place in Iraq or Kuwait, they could be more easily attributable to Iraqi actions. However, for C8-Business losses to be compensable when the business was situated outside Iraq or Kuwait, the Panel required that the causal link be more fully substantiated.

348. There were approximately 230 claims submitted by countries, excluding Israel, where the country of business was indicated to be other than Iraq or Kuwait. Reviews of claims for C8-Business losses situated elsewhere than in Iraq or Kuwait demonstrated that most businesses that were adversely affected by the Iraqi invasion of Kuwait were those operating commercial activities in Kuwait, and to a lesser extent, Iraq. After manual review, businesses in the majority of claims were found either to be physically located in Iraq or Kuwait or the claimants' losses were directly attributable to their being held hostage or forced to hide in Iraq or Kuwait. [282] Having thus satisfactorily demonstrated a presumptive causal link, the claims were evaluated in this instalment in accordance with the Panel's criteria for C8 losses. However, in 61 cases where businesses were physically located outside Iraq or Kuwait, claims were reviewed individually by the Panel.

349. In these situations, where claims for C8-Business losses for businesses that were not located in Iraq or Kuwait raised legal issues such as, inter alia, the existence of pre-invasion debt, shipping and receipt of goods, letters of credit, efforts made to mitigate losses or to receive payment from the contracting parties concerned, the Panel found that it often did not have enough information to make underlying determinations. Some claims for C8-Business losses located in countries other than Iraq or Kuwait were accordingly rejected outright.

350. For others, where the Panel could ascertain that claimants had indeed suffered C8-Business losses, [283] and that the losses had a causal link to Iraq's invasion and occupation of Kuwait, but that all legal and valuation issues pertaining to the losses had not been sufficiently detailed by the claimant, the Panel considered the totality of the business environment, the claimant populations concerned, the expedited nature of category "C" and the evidentiary requirement of the "reasonable minimum necessary under the circumstances" with a lesser standard for claims under US$20,000. In such cases, therefore, the Panel recommended that the claimants receive the lesser of the amount claimed for C8-Business losses or US$20,000.

(c) Situs of the business in Israel

351. The Panel reviewed 77 claims for C8-Business losses that were submitted by claimants from Israel. [284] The claims included (a) losses of individual business income related to the tourism sector; (b) losses from the destruction or damage to business premises, inventory and assets as a result of Scud missile attacks; and (c) losses of individual business income related to businesses other than those in the tourism sector, e.g., pharmacies, shops, or law offices. All businesses claimed for were operated or physically situated in Tel-Aviv or Ramat-Gan, a nearby suburb.

352. In view of the fact that Israel had not only been subjected to the threat of Iraqi military actions, but to specific military operations such

as the launching of Scud missile attacks, the Panel determined that the considerations and rationale for compensating C6-Salary and C7 real property losses occurring in certain locations in Israel during January and February 1991 were also applicable to claims for C8-Business losses located in that country. The Panel also considered external data demonstrating that the tourism sector in Israel had been one of those most adversely affected by the Gulf War, with the monthly flow of tourists diminishing from a pre-invasion high of 90,000 to 13,000 by February 1991. [285] Equally disruptive was the effect on local commerce, especially by January 1991. Because of the ongoing hostilities, commercial activities in Israel reportedly slumped to one-half or three-quarters of normal levels. [286]

353. The "C" Panel also considered the findings of the "E2" Panel in respect of losses in the tourism sector. As noted in paragraph 272 supra, the "E2" Panel determined that, because of the credible and serious threat of military action directed at Israel and the Scud missile attacks which constituted actual military operations, any losses suffered in Israel from 15 January 1991 to 2 March 1991 as a direct result of these military operations were compensable. The "E2" Panel found that claims for losses resulting from business disruption were compensable when they were associated with the invasion and occupation of Kuwait and, specifically, for decline in tourism-related businesses in Israel during the period of military operations or threat of military operations. [287]

354. Therefore, the Panel found that claimants for C8-Business losses in Israel could also be deemed to have demonstrated the requisite facts of ownership, loss and causal link to Iraq's invasion of Kuwait and that their C8-Business losses could accordingly be deemed to be compensable.

(d) Review of claims submitted by Pakistan for "other losses" ("CS-Other")

355. The Panel, in its sixth instalment, distinguished Pakistani claimants in its general decision not to consider claims for CS-Other losses as separately identifiable loss elements. [288] Based on its experience in the first instalment and other trends significant to this claimant group, the Panel determined that the losses should be recategorized as C8-Business losses, where appropriate.

(e) Processing methodology for the seventh instalment

356. The general considerations, observations and conclusions of the Panel in the first instalment continued to be relevant for the processing of the claims for C8-Business losses in the seventh instalment. In particular, these included the general business environment in Kuwait, the widespread use of the rent-a-permit system and the consequent general limitations on the ability of claimants to complete the claim form and provide primary documentary evidence. Nearly 90 per cent of the total claimant population for C8-Business losses came from eight submitting countries: Kuwait,

Jordan, India, [289] Yemen, Egypt, Pakistan, Syria and Iran. The remaining 10 per cent of claimants were distributed among 46 submitting countries and international organizations. Approximately one quarter of the claimants requested compensation for C8-Business loss amounts of US$20,000 or less and approximately 10 per cent claimed for amounts in excess of US$100,000. [290] Claimants were identified as belonging predominantly to two business sectors: (a) trade, both retail and wholesale; and (b) services, predominantly personal and household related, such as tailoring, laundry, etc.

(i) Determination of compensability

357. For the large claimant groups, sample reviews were undertaken. Samples were selected on the basis of standardized statistical methods and the sample size for each claimant group was designed to allow conclusions to be drawn about the particular C8-Business loss population represented. Kuwait, which alone accounted for approximately 4,000 claims for C8-Business losses, represented the most numerous claimant group and was the most homogeneous in terms of evidentiary submissions.

358. The sample reviews undertaken determined that claimants were universally able to provide evidence of the existence of the businesses, the eligible status of those businesses for consideration as C8-Business losses, [291] the claimants' ownership of the businesses and, finally, causation by the Iraqi invasion and occupation of Kuwait, in accordance with the Panel's criteria.

(ii) Evidence in support of valuation of C8-Business losses

359. The sample reviews also assessed the level and quality of the evidence submitted in support of the C8-Business losses claimed. The reviews assessed the level and quality of (a) "general" evidence, that is, any form of documentary evidence relating to the stated business loss that supplemented the information provided on the claim form (this, usually, included personal statements by the claimant and witnesses) and (b) primary evidence submitted in support of value. Examples of the latter included bills, purchase receipts, financial statements, invoices, inventory or insurance lists and documents of a similar nature. As a result of the sample reviews, the Panel concluded that, while a vast majority of claimants for C8-Business losses were able to provide probative evidence to indicate that they had suffered business losses, they were generally not able to provide independent documentary proof for the full amounts claimed or evidence relating directly to the value of their losses, as demonstrated in Table 1, infra.

Table 1. Level of evidence submitted in support of C8-Business losses for claimant groups sampled [292]

Sample groups	General evidence (%)	Primary evidence (%)
Kuwait	100	65
Jordan	90	34
Egypt	84	25
India and Bangladesh	70	18
Yemen and Syria	90	1

(iii) Establishment of external valuation benchmarks

360. The observations made by the Panel in the first instalment, concerning factors that impaired the ability of claimants to present evidence proving the extent of the business losses suffered, also proved to be the situation for C8-Business losses in the seventh instalment. Within this context, lack of primary documentation in support of valuation was not surprising. However, it presented the Panel with the problem of valuation of these losses in the context of a mass processing methodology.

361. For this purpose, therefore, the Panel considered that information about business activity in the Gulf region could be learned from external sources and requested that the secretariat undertake research in this connection. The secretariat's research ascertained that a reliable assessment of normal business activity prior to the invasion in the Gulf region could be construed from a study of the trends in real growth of business activity in Kuwait prior to the invasion. Given sufficient information about past performance, the estimates of business activity for the year in which the invasion occurred would capture the trend in growth or decline over previous years.

362. Because of the insufficiency of time series data, however, a trend for business activity could not be determined. Instead, an estimate of the turnover in the Kuwaiti sectors of (a) retail trade and (b) personal and household services for the year 1990 was based on the performance of those two sectors for the single year of 1989. This meant that the estimated level of revenue per sector for 1990 remained comparable to the pre-war level of 1989. Although the estimates are reliable, no account is taken for growth or decline in business activity. Thus, there is a zero per cent nominal growth from the year 1989 to 1990. Given a positive inflation rate and moderate growth, this could mean that the level of losses in the sectors concerned may actually have been underestimated.

363. The estimates were calculated by deducting the revenues generated per sector in 1990 from the revenues generated per sector in the normal course of business in 1989.[293] Notwithstanding the effect of business trends, the

difference in revenues was presumptively due to Iraq's invasion and occupation of Kuwait.

364. The Panel ascertained the distribution of claimant groups for C8-Business losses between the retail trade and services sectors as noted in Table 2, _infra_. Utilizing the external macro-economic estimates concerning business sectors in Kuwait, the Panel applied a series of external data benchmarks as shown in Table 3, _infra_, to assist with objective determination of the average losses sustained by businesses in Kuwait during the relevant period.[294]

Table 2. _Sectoral distribution of claimants for C8-Business losses_

	Kuwait	Jordan	Egypt	India/ Bangladesh
% claimants engaged in retail trade	49	51	28	44
% claimants engaged in personal and household services	51	49	72	46

Table 3. _C8-Business losses per sector per submitting entity_

	Kuwait	Jordan	Egypt	India/ Bangladesh
Macro-economic benchmarks per group (%RT X KD 32,156 plus %PS X KD 8,100)[295]	(amounts in nearest KD)			
	15,477	15,779	12,316	13,915
	(amounts in nearest US$)			
	53,555	54,597	42,615	48,148

365. The estimates of losses as expressed by these benchmarks represented an average loss per establishment, as derived from general external data and data provided by claimants viewed in the context of their submitting countries. As a consequence, the benchmarks are refined estimates that represent the particular characteristics of claimants from a specific submitting entity. Moreover, the estimates comprise a broad spectrum of establishments operating in Kuwait. The customized macro-economic

benchmarks therefore serve as objectively ascertained amounts against which to compare the amounts claimed by claimants for C8-Business losses.

366. Utilizing these benchmarks, calculated for each claimant group on the basis of the claimant group proportion in the sample, and considering the results of the evidentiary reviews of claims for C8-Business losses together with amounts claimed in the claimant populations, the Panel established the following methodology for resolving C8-Business losses.

(a) If the amount claimed for the business loss was less than or equal to US$20,000, the award was equal to the amount claimed;

(b) If the amount claimed was greater than US$20,000 but less than the benchmark amount determined for the group, the award was equal to the amount calculated as follows:

(i) US$20,000, increased by

(ii) the amount resulting from the multiplication of the amount claimed in excess of US$20,000 by the percentage of C8-Business loss-related general evidence provided by the claimant group;

(c) If the amount claimed was greater than the benchmark amount, then the award was equal to the amount calculated as follows:

(i) US$20,000, increased by

(ii) the amount resulting from the multiplication of an amount (equal to the amount claimed in excess of US$20,000 up to the benchmark amount) by the percentage of C8-Business loss-related general evidence for the group, increased by;

(iii) the amount resulting from the multiplication of an amount (equal to the amount in excess of the benchmark amount) by the percentage of C8-Business loss-related primary valuation evidence provided by the claimant group.

367. As an example of how this valuation methodology was to be implemented, the Panel considered three situations involving a hypothetical claimant from Egypt, as described in Table 4. The estimated benchmark amount for Egyptian claimants was US$42,615. Eighty-four per cent of Egyptian claimants submitted general evidence in support of C8-Business losses; however, only twenty-five per cent submitted primary valuation evidence in support of the loss amounts claimed.

Table 4. Hypothetical calculations for C8-Business losses

Methodology	Amount claimed	Amount recommended (nearest US$)
a. <US$20,000	US$16,000	US$16,000
b. >US$20,000<US42,615	US$30,000	US$20,000 +
	(.84 X US$10,000) =	US$ 8,400
		US$28,400
c. >US$42,615	US$50,000	US$20,000 +
	(.84 X US$22,615) =	US$18,997 +
	(.25 X US$ 7,385) =	US$ 1,846
		US$40,843

(f) Recommendations for claims for C8-Business losses included in the seventh instalment

368. In the seventh instalment, the Panel considered 15,131 claims for C8-Business losses. The Panel recommended compensation in 14,976 claims and did not recommend compensation in 155 claims. The Panel also recommended that the Executive Secretary to arrange for the transfer of 103 claims to category "E" in accordance with article 32(3)of the Rules.

I. Loss type "C9": claims for other damages ("CS-OT")

369. As discussed more fully in the sixth instalment, the Panel took specific note of losses enumerated by the Governing Council in paragraph 14 of decision 1, as well as in decisions 3 and 4, and found that claims for CS-Other losses in category "C" did not represent separately identifiable loss elements for which compensation could be awarded in category "C". To the extent that these losses could be deemed to be compensable, it was only after they were recategorised to an appropriate, already existing loss category.[396]

V. CLAIMS INCLUDED IN THE SEVENTH INSTALMENT

370. The seventh instalment is composed of 71,069 category "C" claims that contain all loss elements for which compensation may be awarded in category "C". These include: (a) claims for departure-related losses ("C1-Money) and mental pain and anguish for being illegally detained or held hostage ("C1-MPA-ID"), or for being forced to hide ("C1-MPA-FH") on the "C1" page

of the claim form; (b) claims for personal injury ("C2-Money") and mental pain and anguish for serious personal injury ("C2-MPA") or for witnessing the intentional infliction of injury on a spouse, child or parent ("C2-MPA-W") on the "C2" page of the claim form; (c) claims for lost support from death of a spouse, child or parent ("C3-Support"), for medical, burial or other expenses ("C3-Other"), mental pain and anguish for the fact of death of a spouse, child or parent ("C3-MPA"), or for witnessing the intentional infliction of events leading to the death of a spouse, child or parent ("C3-MPA-W")on the "C3" page of the claim form; (d) claims for personal property losses ("C4-CPHO") or for the loss or theft or repairs to a motor vehicle ("C4-MV) on the "C4" page of the claim form; (e) claims for bank account losses in Kuwait or Iraq ("C5-BA") or for stock and securities losses ("C5-SOS") on the "C5" page of the claim form; claims for employment-related losses ("C6-Salary"), or lost support ("C6-Support") or mental pain and anguish arising from the deprivation of all economic resources so as to seriously threaten survival ("C6-MPA") on the "C6" page of the claim form; claims for real property losses ("C7-Repairs" and "C7-Other") on the "C7" page of the claim form; and claims for individual business losses ("C8-Business") on the "C8" page of the claim form.

371. Each loss element has required the elaboration of different compensability criteria and different assessment and valuation methodologies, most specifically designed for a mass claims processing programme that has required creative solutions to expedite resolution for compelling and complex issues involving multinational claimant groups. This seventh report, together with its predecessors, therefore represents the sum total of the jurisprudence of the Panel in respect of its resolution of approximately 420,000 individual claims for damages up to US$100,000.

372. During the processing of the seventh instalment, as in respect of previous instalments, the secretariat applied a special computer programme to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between category "A" departure claims and claims for departure losses submitted on the "C1" page of the category "C" claim form. As with previous instalments, and after confirming that claimants who submitted individual or family claims for departure losses in category "A" had also submitted claims for departure losses in category "C", the Panel has instructed the secretariat to reduce the C1-Money departure awards in accordance with decision 24 of the Governing Council.

373. For the first time during the processing of category "C" claims, the secretariat applied a special computer programme to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between (a) category "B" serious personal injury and claims for serious personal injury submitted on the "C2" page of the category "C" claim form, and (b) category "B" claims

for the death of a spouse, child or parent with identical claims submitted on the "C3" page of the category "C" claim form. After confirming that claimants who submitted individual or family claims for serious personal injury or death in category "B" had also submitted identical claims for C2-Money or C3-Money in category "C", the Panel has instructed the secretariat to reduce the C2-Money and C3-Money awards to avoid multiple recovery in respect of such losses.

VI. RECOMMENDATIONS

374. The Panel hereby presents the amounts recommended as compensation for 67,079 claims in the seventh instalment of category "C" claims. Totalling US$1,918,413,948.51, the recommended amounts for each Government and international organization included in the seventh instalment are listed in the following table. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the seventh instalment resolve all loss elements present in these claims. The Panel has not recommended compensation for 3,990 claims in the seventh instalment.

375. Those claims not recommended for payment relate to the following types of losses included in previous instalments: claims by Iraqi dual nationals without bona fide dual nationality; claims with no electronic loss information (global status "null"); [297] duplicate claims submitted by the same claimants for the same losses in category "C"; claims for C1-Money losses in which recommended amounts are equal to or lower than the amounts previously approved by the Governing Council for the same claimants in category "A"; [298] C1-Money claims for departure that do not meet the jurisdictional period requirements as specified by the Panel; claims for C1-MPA-HT/ID for less than three days that do not meet the criteria for "imminent threat" specified by the Panel; claims for C4-MV losses that do not meet the proof of ownership criteria specified by the Panel; claims for C5 bank account losses in Kuwait; claims for C6-Salary losses that do not meet the jurisdictional requirements for location of loss as specified by the Panel; and C6-MPA losses for Egypt. [299] In addition, in this seventh instalment, claims not recommended for payment include any claims for any losses that have not met the Panel's criteria for compensation as detailed in the relevant discussions herein.

Table 5. Summary of seventh instalment recommendations

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Afghanistan	620	68	6,546,539.61
Algeria	16		695,540.82
Argentina	1		70,538.55
Australia	55	2	1,702,771.53
Austria	13	3	620,999.83
Bahrain	6	4	148,039.74
Bangladesh	2,019	11	37,554,395.74
Belgium	6	1	231,802.31
Benin	1		9,177.00
Bulgaria	8		125,605.86
Cameroon	1		8,766.44
Canada	250	8	11,857,638.70
Chad	1		22,563.35
China	4		124,658.70
Croatia	7		192,329.35
Cyprus	2	1	122,504.84
Czech Republic	8	1	145,166.19
Denmark	3		144,690.81
Egypt	13,598	1,446	228,574,373.13
Ethiopia	8		55,973.18
Finland	15		297,969.31
Federal Republic of Yugoslavia	5	2	148,194.04
France	171	5	6,534,238.54
Germany	54	6	2,220,488.11
Ghana	1		47,734.21
Greece	15		614,271.21
Hungary	9		284,036.35
India	8,970	386	185,773,000.03

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Iran, Islamic Republic of	731	40	26,975,073.39
Ireland	45		1,265,251.55
Israel	230	11	4,821,126.19
Italy	50	3	1,440,604.82
Japan	22		582,774.02
Jordan	8,464	445	279,894,629.49
Kenya	4		15,458.48
Korea, Republic of	35		2,365,481.86
Kuwait	18,516	166	784,934,659.15
Lebanon	548	6	15,514,902.72
Malaysia	1		22,453.23
Mauritius	13		163,472.65
Morocco	25		769,485.67
Nepal	2		14,495.18
Netherlands	24	4	814,269.57
New Zealand	7		237,824.47
Niger	1		34,733.08
Nigeria	23	1	271,732.67
Norway	1		22,092.68
Pakistan	3,997	973	72,220,012.40
Philippines	1,007	237	10,254,242.61
Poland	49	10	716,179.29
Portugal	2	2	63,496.91
Romania	1		31,894.07
Russian Federation	1		48,442.91
Saudi Arabia	2	4	60,431.66
Senegal	2		46,66[illegible].16
Seychelles	1		60,418.14
Sierra Leone	1		42,433.14
Singapore	4		191,724.05

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Slovakia	4	1	69,466.82
Slovenia	5		119,825.39
Somalia	64	9	1,180,810.34
South Africa	1		31,786.29
Spain	5		147,896.97
Sri Lanka	964	17	5,187,819.35
Sudan	626	3	14,740,586.11
Sweden	20	1	935,577.80
Switzerland	8		207,359.65
Syria	1,970	20	56,697,373.20
Tanzania	2		23,909.76
Thailand	46		912,347.94
Tunisia	327	5	8,305,384.84
Turkey	84	2	2,525,646.17
United Arab Emirates	0	7	0.00
United Kingdom	771	20	28,429,392.05
United States of America	428	5	15,758,081.21
Vietnam	3		33,328.47
Yemen	1,588	13	79,127,855.58
UNDP Jerusalem	125	4	4,324,195.44
UNDP Kuwait	27	11	891,369.68
UNDP Washington	28	4	1,130,475.75
UNDP Yemen	38	3	681,255.41
UNHCR Bulgaria	10	1	285,424.54
UNHCR Canada	23	7	1,121,785.59
UNHCR Geneva	1		16,551.20
UNRWA Gaza	235	11	6,757,977.27
Total	67,079	3,990	1,918,413,948.51

376. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claims in order to prevent instances of overpayment to their claimants.

377. With reference to the considerations on the subject of interest expressed in the First Report, [300] the Panel recommends that interest be awarded on the claims included in this seventh instalment of category "C" claims as of 2 August 1990. [301]

378. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 30 March 1999

(*Signed*) Mr. L. Yves Fortier, Q.C.
Chairman

(*Signed*) Mr. Sergei N. Lebedev
Commissioner

(*Signed*) Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ See the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes (the "First Report"), S/AC.26/1994/3, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum (the "Second Report"), S/AC.26/1996/1 and S/AC.26/1996/1/R.3/Add.1/Rev.1, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Third Report"), S/AC.26/1996/2, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (the "Fourth Report"), S/AC.26/1996/4, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Fifth Report"), S/AC.26/1997/1, and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Sixth Report"), S/AC.26/1998/6.

3/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998).

4/ S/AC.26/1991/1.

5/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" claims)" ("First 'B' Report"), S/AC.26/1994/1, at pp. 12-13.

6/ First Report, pp. 12-13.

7/ S/AC.26/1992/12. This decision extends filing deadlines for certain types of claims, *inter alia*, for claims of individuals for losses resulting from public health and safety risks that occur after or within one year prior to the expiration of the established filing deadlines.

8/ See First Report, pp. 12-13 and accompanying notes.

9/ Ibid., p. 77.

10/ See Sixth Report, at paras. 21-27. This decision was taken after reviews confirmed that many expatriate nationals who resided in Iraq or Kuwait and who departed prior to the jurisdictional period had left during the traditional vacation months of June and July 1990 and were prevented from returning because of Iraq's invasion and occupation of Kuwait.

11/ The presence of one or the other of these identification numbers in the relevant electronic field establishes the fact of residence in Iraq or Kuwait prior to the 1990 invasion and occupation.

12/ First Report, p. 13.

13/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait ("Category 'A' Claims")", S/AC.26/1996/3, para. 30.

14/ Sixth Report, paras. 14-15. Both Panels were mindful of two overriding considerations: (a) that the claims in connection with which this issue arose were "urgent claims" for the compensation of which "expedited procedures" had been prescribed by the Governing Council in decision 1; and (b) that the issue to be determined was whether the second nationality was acquired bona fide in the context of eligibility to claim compensation before the Commission.

15/ Ibid., para. 15.

16/ Decision 11 specifies that three conditions must be met for the loss or injury to be compensable: (a) the compensation is awarded in accordance with the general criteria already adopted; and (b) the claimants were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and (c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Conventions of 1949).

17/ See First Report, pp. 15-16.

18/ First "B" Report, pp. 17-19.

19/ First Report, pp. 17-18. It follows from this definition of "family" that claims put forward by other relatives such as brothers or sisters, grandchildren, grandparents, nieces, nephews or uncles and aunts of the deceased or injured person would be excluded. First Report, p.18, note 47.

20/ Ibid., p. 18.

21/ Decision 1, at paragraphs 10-13, specifically provided for the payment of fixed amounts to persons who, as a result of Iraq's unlawful invasion and occupation of Kuwait, (a) departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991; (b) suffered serious personal injury; or (c) whose spouse, child or parent died. Claims in category "A" covered departure losses while claims in category "B" covered serious personal injury and death losses. Both categories "A" and "B" provided for fixed amounts to be paid in "family" situations. Category "C" does not.

22/ Some of these claims were separated from each other during the secretariat's claims registration and cover sheeting project when two separately completed claim forms were found to exist in the same file.

23/ This intention was generally evidenced by the completion of separate claim forms for each individual, by the submission of more than one completed claimant identification page in the name of a different person or persons or by the completion of both sides of the claimant identification page in different names, along with the provision of identification information for each claimant.

24/ Separation of "multiple" claims occurred when such claims were identified during the registration and organization of claims data phases. Claimed amounts were adjusted accordingly at that time. The claims discussed here were identified after all off-site registration activities had concluded. The newly created category "C" claims were included among those in the secretariat's on-site data entry project that is noted in section II infra.

25/ The circumstances considered to be directly linked to Iraq's invasion and occupation of Kuwait and to have caused such losses include: (a) military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; (b) departure from or inability to leave Iraq or Kuwait or a decision not to return during that period; (c) actions by official, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation; (d) the breakdown of civil order in Kuwait or Iraq during that period; or (e) hostage-taking or other illegal detention.

26/ Decision 15, para. 3.

27/ First Report p.21 and accompanying notes.

28/ First Report, p. 21.

29/ See generally First Report, pp. 23-29, for a detailed discussion of the evidentiary items noted.

30/ See generally First Report, pp. 29-33, for a detailed discussion of the rationale for selecting the currency exchange rate noted.

31/ See generally First Report, pp. 39-48, for a detailed discussion of the rationale for the Panel's decision to use mass claims processing methods to resolve claims in category "C".

32/ The claims included in the first instalment were the first claims received by the Commission. Therefore, they did not include the submissions of all concerned Governments and international organizations, nor did they reflect the full experience developed by those entities in preparing their claims, nor were they sufficient in number to raise all generally applicable issues for each loss element. See Second Report, para. 10.

33/ First Report, pp. 40, 48, 138 and 181.

34/ See generally Second Report, paras. 8-23, describing the rationale, organization and preparation of claims for electronic processing.

35/ First Report, pp. 47-48.

36/ Sixth Report, para. 8.

37/ Two additional claims, submitted in accordance with decision 12, were incorporated into the category "C" claims database in February 1999, in time to be included in the electronic processing cycle for the seventh instalment.

38/ The First Report addresses the background of these problems (see pp.42-43). While certain claimants understood the claim form, or received adequate assistance in the quantification and presentation of their damages, for the vast majority of individuals, the completion of the claim form was a highly unusual and difficult exercise. In addition, not all claimants were able to benefit from the guidance of a well-organized national claims programme.

39/ In the Second Report, the Panel listed the far-reaching and varied difficulties associated with the category "C" claims received by the Commission as follows: "duplicate claim forms filed by the same claimant; multiple claims filed on behalf of or with other individuals; claims that were later supplemented or substituted in whole or in part; formal deficiencies under the Rules; identical or similar losses claimed in other claims categories; misunderstanding of jurisdictionally relevant dates; incorrect calculations; unclear currencies; different numbering conventions; the use of wrong claim form pages; overlapping or double-claimed losses within a claim; implied or express inclusion of individual amounts for lump sum categories of mental pain and anguish; discrepancies between originals and copies of claim forms; contradictions between two completed sides of the form; questions of translation; claims exceeding US$100,000; lack of family-related information; inadvertent switches of evidentiary attachments between claims; ambiguity as to a claimant's identity; illegible information; claim forms in a tattered condition; ambiguous modifications to the completed claim forms; inconsistencies between specific amounts and totals; and the partial completion of the claim form." (para. 20).

40/ First Report, p. 43 and Second Report, para. 21.

41/ First Report, pp. 51-53.

42/ Ibid., pp. 52-53.

43/ The Panel took note that this information was specifically verifiable through the Kuwait Public Authority for Civil Information database. First Report, p. 53.

44/ Ibid.; Second Report, paras. 19-20.

45/ Second Report, para. 22.

46/ The Panel specifically referred to this use of the computer for matching exercises in the first instalment. First Report, pp. 71-72. Additionally, claims have been identified as duplicates during manual review exercises. Such claims had not previously been identified by the computer matching programme because of inconsistencies in identifier information. After confirmation that the claims were in fact submitted by the same person for the same losses, the identifier information has been amended so as to render it consistent. Thus, such claims are currently identifiable by electronic means.

47/ See the Sixth Report, at paras. 98-102 and accompanying notes, for a description of the specific selection policy for intra-category duplicate category "C" claims and the rationale for that policy.

48/ Sixth Report, note 121.

49/ This number refers to unreported and unprocessed claims. Certain claims had been reported in previous instalment reports to Governments and international organizations before the corresponding duplicate claims were identified. In such cases, failing notice to the contrary from the Government or organization to which the claims were reported, the Panel determined that the reported claims were de facto valid and that corresponding unprocessed duplicates would be rejected.

50/ Each notification forwarded a confidential list of the specific matched claim numbers, claimant names and identifier information as such related to each Government or organization concerned and requested that the recipients respond in writing to the secretariat by no later than 30 September 1998.

51/ The Panel considered that this action was in accordance with decision 5 and article 5.2 of the Rules, which together provide for an appropriate person, authority or body appointed by the Governing Council to submit claims on behalf of persons who are not in a position to have their claim submitted by a Government. All other things being equal, persons whose claims were also submitted by a Government were *prima facie* in a position to have their claims submitted by a Government.

52/ In the Panel's selection policy, the presumption was that the higher lot number or the higher claim number within the same lot indicated the version filed later, or latest, in time.

53/ S/AC.26/Dec.21 (1994).

54/ See, e.g., First Report, pp. 54-55 and 71-72; Second Report, para. 54; Third Report, para. 10; Fourth Report, para. 10; Fifth Report, para.18; and Sixth Report, para. 119.

55/ First Report, p. 55.

56/ S/AC.26/1991/7/Rev.1.

57/ Ibid., para. 8; Rules, art. 35(3).

58/ S/AC.26/1991/7/Rev.1, para. 3.

59/ See generally Sixth Report, paras. 16-20 (discussing the treatment of amounts claimed in excess of US$100,000).

60/ For a full discussion of issues related to outlier claims see paras. 193-198, *infra*

61/ Addendum to the Second Report, S/AC.26/1996/R.3/Add.1/Rev.1 ("Second Report Addendum"), annex I, para. 10.

62/ First Report, pp. 192-193; and Second Report, paras. 44-51.

63/ S/AC.26.1991/7/Rev.1, paras. 16-29 and paras. 30-42 respectively.

64/ First Report, p. 56.

65/ S/AC.26/1992/13.

66/ First Report, pp. 57-58.

67/ See generally, Sixth Report, paras. 84-88 and accompanying notes, providing the Panel's considerations and rationale.

68/ The Panel arrived at the figure of US$9,000 after statistical analysis of relevant claims data concluded that the reducing effects of the fast-track methodologies in category "C" effectively worked to cancel the amount of declared compensation received so as to negate duplicate recovery up to that amount. Moreover, those claimants who declared large sums as compensation received from non-Fund sources were predominately nationals of OECD countries.

69/ First Report, p. 68. See generally pp. 59-81 for the Panel's considerations, findings and conclusions in respect of C1-Money losses in the first instalment.

70/ First Report, pp. 78-79. The Panel provided several examples both of costs it considered to be temporary and extraordinary in nature and of costs it did not consider to be temporary and extraordinary.

71/ The Panel noted that approximately 93 per cent of C1-Money claimants submitted some form of evidence in support of their claim in addition to the claim form. However, while this evidence demonstrated the fact of loss, it did not provide objective support for amounts sought in compensation.

72/ First Report, pp. 79-80. In its first instalment, the Panel also manually reviewed claims with C1-Money losses where the amounts claimed were higher than the average and compensated such claims to the extent that the amounts were temporary and extraordinary in nature and could also be supported by documentary proof.

73/ Second Report Addendum, annex I, "Technical Description", paras. 7-9. The Panel also mandated the manual review of claims for C1-Money losses that contained "outlier" amounts claimed (amounts that were significantly higher or lower than the average amounts); however, once the amounts were verified as not being the result of data error, the model was applied to all C1-Money losses.

74/ See Sixth Report, paras. 21-27 and accompanying notes, for a detailed discussion of the issues and outcome.

75/ Sixth Report, para. 27.

76/ First Report, pp. 82-96.

77/ Ibid., p. 92.

78/ Sixth Report, paras. 38-40.

79/ First Report, p. 90. For a detailed discussion of the first instalment considerations, see First Report, pp. 90-91.

80/ Ibid., p. 91.

81/ Ibid. For example, the Panel considered that the number of days stated was routinely compared to the stated date of departure from Iraq or Kuwait and, where necessary, amended to conform. See note 167.

82/ Second Report, para. 32. Approximately 94 per cent of claims submitted by nationals of OECD countries for hostage-taking or illegal detention for more than three days satisfied the Panel's criteria. These results are also consistent with United Nations reports regarding incidents and patterns of hostage-taking and detention during the invasion and occupation of Kuwait. See note 32.

83/ Fifth Report, para. 11. The sampling results confirmed that, while the number of days stated in the claim form was reliable, some claimants had actually understated the number of days supported by the evidence attached to the claim forms. See note 18.

84/ Sixth Report, para. 42. The Kuwaiti claims programme submitted some claims on behalf of claimants from countries other than Kuwait, who generally remained in Kuwait throughout the invasion period. In respect of claims for C1-MPA, these individuals had experiences similar to those of Kuwaiti nationals. The group included Somali and Ethiopian nationals and nationals of other countries who generally had family ties to Kuwaiti nationals, e.g., spouses. Ibid., notes 53-54.

85/ Ibid., para. 43. These claimants were detained in Kuwait after the cessation of hostilities and not as a direct result of acts or actions of Iraq. Where indicated at all, departure dates were generally after 2 March 1991.

86/ Sampling was used to determine trends for submitting countries having more than 1,000 claims with C1-MPA losses for hostage-taking or illegal detention for more than three days. Smaller submissions or those coming from the same geographic locations were grouped to form one sample population. Randomly chosen claims were reviewed in order to ascertain whether sufficient evidentiary support existed, to evaluate the level of that support and to determine whether or not the criteria established by the Panel for this loss element in the First Report have been met.

87/ This percentage is calculated by taking the average percentage of all percentages of claims submitted by non-OECD nationals that have been determined to have met the criteria for C1-MPA hostage-taking or illegal detention for more than three days, weighted by the relative size of the populations included. Sixth Report, note 57.

88/ First Report, pp. 92-95. The eight "forced hiding conditions" are specified in the First Report at pages 93-95.

89/ The determination was based on the results of sampling projects that confirmed that all claims by OECD nationals and 99.5 per cent of claims submitted by Kuwait satisfied the Panel's criteria. (Second Report, note 32). Kuwaiti nationals and nationals of OECD countries met at least one of the eight "forced hiding conditions". They were known to have been specifically targeted for hostage-taking or illegal detention and were thus generally forced to hide. First Report, pp. 93-95; and Second Report, para. 31.

90/ See generally, Second Report, paras. 25-32. For claimants from countries other than Kuwait or OECD countries, submitting entities with 1,000 or more claims for C1-MPA for forced hiding represented distinct sampling groups, while submitting entities with fewer than 1,000 claims were geographically grouped to form one sampling population. In this way, the sample groups attempted to maximize homogeneous claimant groups who could be expected to share evidentiary and other relevant characteristics.

91/ Together with those Kuwaiti nationals who were unable to leave their country, Somali and Ethiopian nationals generally remained in Kuwait throughout the invasion period and, with respect to C1-MPA claims, had experiences similar to those of Kuwaiti nationals, citing inter alia, aerial bombings, killings by Iraqis and the danger from bullets going astray as their reasons for going into hiding. First Report, pp. 93-95; Second Report, para. 31.

92/ See generally Sixth Report, paras. 46-52, summarizing the Panel's considerations and decisions.

93/ This percentage is calculated by taking the average percentage of all percentages of claims determined to have met the C1-MPA forced hiding criteria, weighted by the relative sizes of the populations included.

94/ For claims for C1-MPA for forced hiding or for hostage-taking or illegal detention for more than three days, the number of days stated in excess of three (3) is never reduced to less than four (4).

95/ Sixth Report, para. 52.

96/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)" ("First 'B' Report"), S/AC.26/1994/1, p. 22. The secretariat proposed to Governments that they should withdraw such claims and resubmit them under categories "C" or "D". A number of Governments modified their submissions accordingly.

97/ S/AC.26/Dec.25 (1994).

98/ For a detailed list of the reports that the Panel took into account during its deliberations on personal injury-related issues, see First Report, p. 98, note 172.

99/ See generally First "B" Report, pp. 12-20 and 23, for a detailed discussion of the "B" Panel's conclusions on each of these topics.

100/ Decision 3 defines "serious personal injury" as (a) dismemberment; (b) permanent or temporary significant disfigurement, such as a substantial change to one's outward appearance; (c) permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system; (d) any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery.

101/ Decision 1, at paragraph 14, does not specify "serious" personal injuries only and provides generally for the payment of medical expenses. "Serious personal injury", as defined in decision 3, is the requirement for injury compensation in category "B". It is also the prerequisite for an award of C1-MPA. The Panel took note of this distinction in the first instalment. First Report, p. 104.

102/ For a detailed discussion of the Panel's rationale and considerations in respect of C2 personal injury and MPA losses, see First Report, pp. 97-114.

103/ However, as noted in the discussion of C1-MPA, paras. 102-103 and 106-108 *supra*, results of reviews for this instalment were also inconclusive in respect of claimants who were not nationals of Kuwait or of OECD countries. Thus, the mere fact of indicating an injury category on the C2 loss page, especially a serious personal injury category, without providing the date of injury, was not considered by the Panel to be adequate proof of injury for any claimant.

104/ See First Report, pp. 98-102, detailing the principal causes of injury.

105/ In connection with this last point, the Panel relied extensively, as did the "B" Panel, on "The Traumatic Events and Mental Health Consequences Resulting from Iraqi Invasion and Occupation of Kuwait" prepared by the Al-Reggae Specialized Center for Treatment of War Victims in Kuwait, dated 1 December 1993 (the "Al-Reggae Report"), which documented the serious effect that the invasion and occupation had on the mental health of the population.

106/ S/AC.26/1991/1, para. 18.

107/ First Report, pp. 108-111.

108/ Ibid., pp. 110-111.

109/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1994/4 ("Second 'B' Report"); "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1995/1 ("Third 'B' Report"); "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1995/6 ("Fourth 'B' Report").

110/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)", S/AC.26/1998/11 ("Third 'D' Report"), paras. 41-76.

111/ Second "B" Report, para. 16.

112/ Second "B" Report, para. 18. The "B" Panel had already held, in an analogous situation in its First "B" Report that, when the deceased had not claimed for a serious personal injury prior to his or her death, the "executor cannot claim for the payment of an obligation that, at the time of the death of the injured person, had not yet arisen". First "B" Report, p. 20. However, as will be discussed in connection with death claims infra, a C2 claimant who has an eligible family relationship may be eligible to have the personal injury claim recategorized as a "C3" loss for witnessing of events leading to the death of a family member.

113/ First "B" Report, p. 21.

114/ First "B" Report, pp. 21-23; Second "B" Report, para. 19; Third "B" Report, para. 14; Fourth "B" Report, para. 19. In cases where a category "C" claim matching a transferred "B" claim already existed and that claim also had a C2 personal injury claim, but with no additional documentation or explanation of circumstances, the C2 personal injury claim was recategorized to the appropriate C1-MPA category, if a C1-MPA claim did not already exist. If a C1-MPA claim already existed, the C2 loss was cancelled, so long as the claimant had neither claimed for nor presented evidence in support of medical expenses. See Sixth Report, paras. 95-97.

115/ First "B" Report, p. 22.

116/ Second "B" Report, para. 31.

117/ Ibid., para. 32.

118/ Ibid., paras. 20-24.

119/ Ibid. In connection with vehicular accidents which occurred while individuals were fleeing Iraq or Kuwait to escape the invasion and occupation, the "B" Panel took account of the particular circumstances of each case such as the hardship of travel, the parties involved, the date, location and immediate cause of the accident in its recommendation of compensation. Second "B" Report, para. 24. Therefore, where the "B" Panel had already decided the issues relating to a given vehicular accident, the Panel considered the "B" Panel's determination to be dispositive. For those claims for C2 personal injuries that were caused by vehicular accidents, but for which there was no matching "B" claim, the Panel considered the timing of the accident to be the most significant indicator of the causal link to the Iraqi invasion and occupation of Kuwait.

120/ Second "B" Report, paras. 33-35.

121/ Second "B" Report, paras. 28-30.

122/ First Report, pp. 107-108.

123/ In 1998, for the first time, the Panel was able to view the full population of claimants for C2 personal injury losses, the number of losses, the breakdown of injuries per age groups, the age groups, genders, nationalities and submitting entities and compare this information with external information on departure patterns and injuries suffered.

124/ This was most often the case when a claimant had established an actual valid hostage-taking situation on the C1 page, in contrast to a presumptive situation, and had also alleged "torture" on the C2 page, but had not provided specific information in respect of the C2 situation.

125/ This is what most often occurred with such losses. In any case, the Panel did not deem them to be compensable C2 losses.

126/ Certain groups of claimants who routinely alleged "torture" without specifying dates or details of physical torture actually meant and sometimes specified "mental" torture.

127/ The manual reviews determined that claimants viewed incidents of indecent exposure on a par with sexual assault.

128/ The Panel approved C2-MPA awards of US$2,500 for each incident described. See discussion of C2-MPA, paras. 135-140 infra.

129/ The secretariat requested the expertise of the same firm of international actuaries that had already provided advice to the "D" Panel in respect of the valuation of its D3 support losses.

130/ "Implementation of U.N. Resolution No. 692 of 20 May 1991: valuation and compensation of outstanding C.2 personal injury claims. Analysis and recommendations", prepared for the Commission by Watson Wyatt S.A., in collaboration with Dr. Giovanni Tamburi and Dr. Christian Richner, April 1998.

131/ The ratio is composed of three variables: (a) F1 equals the age multiplier (if the claimant is age 35 or younger, F1 is equal to 1.2; if the claimant is over 35 years of age, F1 is equal to 1.0); (b) F2 equals the submitting entity multiplier (if the submitting entity is Kuwait, then F2 is equal to 1.0; if the submitting entity is an OECD country, then F2 is equal to 1.2; if the submitting entity is neither Kuwait, nor an OECD country, the F2 is equal to 1.4); and (c) F3 equals the gender and marital status multiplier (if the gender is male or not indicated, then F3 is equal to 1.1; if the gender is female and the submitting entity is not Kuwait and not an OECD country, and the marital status is single or divorced, then F3 is equal to 1.2; if the claimant is female and either (i) married or status not indicated, or (ii) from Kuwait or an OECD country, then F3 is equal to 1.0.

132/ There are two age groups only: Group I includes injured persons up to 35 years of age; and Group II includes injured persons over 35 years of age.

133/ Decision 8 specifies ceilings as follows: (a) US$15,000 for dismemberment, permanent significant disfigurement, or permanent limitation or loss of use of a body organ, member, function or system; (b) US$5,000 for a temporary significant disfigurement or temporary loss or limitation of use of a body organ, member, function or system, as well as for each incident of sexual assault, aggravated assault, or torture; and (c) US$2,500 for witnessing the intentional infliction of a serious personal injury on the claimant's spouse, child or parent, with a ceiling of US$5,000 per family unit.

134/ First Report, p. 112.

135/ "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish" dated 14 March 1994 ("the MPA Report"). The MPA Report was included as annex VI to the First Report.

136/ First Report, pp. 112-113.

137/ Ibid., pp. 113-114.

138/ These profiles included information (a) about the claimant (nationality, sex, marital status and age); (b) about the circumstances (situations of illegal detention, hostage-taking, or forced hiding and, if so, the number of days in each situation); and (c) about the injury (injury category, permanent or temporary nature of the injury and the description provided by the claimant in the claim form).

139/ Examples of such contradictory evidence were: dates of departure from Iraq or Kuwait prior to 2 August 1990 or dates of injury indicated as occurring after 2 March 1991.

140/ For detailed criteria and conclusions reached by the Panel, see First Report, pp. 115-128.

141/ Ibid., p. 122.

142/ Ibid., pp. 116-119.

143/ Ibid., p. 98, note 172, p. 116, note 221, and p.117, note 244.

144/ Ibid., p. 124.

145/ The Panel rejected a number of accident-related death claims in the first instalment after consideration of the parties involved, and the date, location and immediate cause of the accident. It also received advice from a medical expert where necessary in determining causation for deaths allegedly caused by lack of medical treatment. First Report, pp. 124-125.

146/ See notes 96, 109 supra.

147/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)", S/AC.26/1998/1, ("First 'D' Report"), paras. 171-244.

148/ Second "B" Report, para. 34.

149/ Ibid.

150/ Ibid., para. 36.

151/ Third "B" Report, para. 5.

152/ In 1998, for the first time, the Panel was able to view the full population of claimants for C3 death losses, the number of losses, the breakdown of losses across age groups, genders, nationalities and submitting entities and compare this information with external information on departure patterns and deaths suffered.

153/ Both types of claims were most generally submitted by the surviving spouse of the deceased, but in the name of the deceased person.

154/ Both loss elements are considered generally as C3-Money losses.

155/ First "D" Report, paras. 208-226.

156/ Ibid., para. 208.

157/ The "C3" page of the paper claim form requests claimants to provide the figure for "earnings of deceased in 12 months prior to 2 Aug. 1990", generally eliciting responses providing annual earnings. The relevant field in the electronic form contains the figure for monthly earnings.

158/ These principles included:

(a) had death not occurred, the deceased would have had an expectation of life equal to that of a person of the same sex, age and nationality, as indicated in the most appropriate available life tables;

(b) had death not occurred, the deceased would have continued to earn and to provide support to his eligible dependents during the deceased's life span;

(c) the level of earnings of the deceased would have decreased after reaching normal pensionable age;

(d) compensation should be assessed on the basis of the family unit composition at the time of death, disregarding its further modification;

(e) compensation should be paid on the basis of the deceased's earnings at the time of death.

See First "D" Report, para. 212, and accompanying notes.

159/ See First "D" Report, at paras. 213-222 describing the actions and recommendations of the actuaries.

160/ The original groups are expressed in the First "D" Report, at note 85. The Panel's C3 methodology expands these groups as follows, to take into account the more numerous submitting entities represented in category "C":

Group 1 - UNDP Kuwait, UNHCR Canada, UNHCR Bulgaria, UNHCR Geneva, UNDP Washington, UNRWA Vienna, United Arab Emirates, Bahrain, Algeria, Egypt, Kuwait, Jordan, Lebanon, Morocco, UNDP Jerusalem, Syria, Sudan, Tunisia;

Group 2 - Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States and Israel;

Group 3 - All submitting countries not included in Groups 1 and 2.

161/ First "D" Report, paras. 215-216.

162/ The "D" Panel adopted the suggestion of the actuaries that a suitable indicator of safe medium and long-term return was the yield offered by Government treasury bills. First "D" Report, note 86.

163/ "In considering the possible fluctuations in inflation, the actuaries looked at monetary stability which is measured by the International Monetary Fund which compares national currencies to a benchmark represented by the value of a unit of Special Drawing Rights (SDR). As an alternative measure of monetary stability and as a direct indicator of inflation, the actuaries considered the Consumer Price Index for each of the currencies in the D3 claims population." First "D" Report, note 87.

164/ First "D" Report, para. 217.

165/ Ibid., paras. 218-219.

166/ This could mean that residual amounts would be apportioned only among claimants in category "D".

167/ Because claims in category "D" were not subject to the US$100,000 limitation on recovery, often "family" submissions were made. Eligible dependents were often listed separately within a single claim number. For the C3 compensation formula, apportionment is made in accordance with the unique claim number that has been assigned to the claim. One claim number equals one dependent.

168/ First "D" Report, para. 211. The United States-Germany Mixed Claims Commission awarded compensation where the deceased was a housewife in the following cases: *Arthur Courtland Luck*; *Frances Lapham Field* and *Terence Joseph Condon*. See Marjorie M. Whiteman, *Damages in International Law*, (United States Government Printing Office, Washington, 1937), vol. I, pp. 693-694.

169/ See First "D" Report, para. 223, for the Panel's considerations and the chart of lump sum amounts recommended.

170/ The presumptions generally consider that children under 21 would not be earning an income and differentiate between spouses who had dependent children and those who did not. There is also a differential in respect of whether the deceased person was younger or older than 55, the presumed age of retirement. First "D" Report, para. 223.

171/ Persons may have presented claims as part of "family" submissions in category "D" and were thus not discovered in their capacity as individual claimants at the time of apportionment of amounts in category "C". Verification for all such persons included within individual category "C" claims was not feasible in view of the expedited nature of the category.

172/ First Report, p. 125.

173/ In respect of C2 and C3-related expenses, it was observed that claimants in category "C" often claimed amounts that were related to non-pecuniary losses, i.e., MPA, rather than to actual expenditures.

174/ MPA Report, First Report, annex VI, pp. 263-264.

175/ These profiles included information (a) about the claimant (nationality, sex, marital status, and age); (b) about the decedent (relationship to the claimant and age at the time of death; and (c) about the death (when the death occurred and what expenses were being claimed).

176/ These sources are listed in the First Report, note 257.

177/ See generally the Panel's considerations in the First Report, pp. 129-138.

178/ It is in part for this reason that personal property losses, together with departure losses and losses related to salaries and wages, have been considered to be "fast-track" loss elements. The Panel introduced the "fast-track" approach in the second instalment in an attempt to expedite recovery of compensation to the largest number of claimants in category "C".

179/ First Report, p. 138.

180/ For a detailed description of the Panel's considerations and practice in the first instalment, see First Report, pp. 138-147.

181/ The Panel found this attributable to, inter alia: (a) the inherent difficulty of documenting items purchased over a number of years in several locations; (b) the cash-based economies of Kuwait and Iraq; and (c) the general circumstances surrounding the claimants' losses that were caused by the Iraqi invasion and occupation of Kuwait. First Report, pp. 140-142.

182/ See generally First Report, pp. 142-144.

183/ Second Report, paras. 33-34.

184/ Second Report Addendum, annex I, "Expert Opinion of Professor Y. Balasko and Professor G. Ritschard".

185/ Ibid., "Technical Description", para. 9.

186/ Ibid., paras. 7-29.

187/ Second Report, para. 39.

188/ In the context of the C1-Money or the C4-CPHO models, a claim is considered to contain an "outlier" amount claimed if an amount claimed for any one of the C1-Money losses (transportation, food, lodging, relocation costs, other) or C4-CPHO losses (clothing, personal effects, household furniture, other) differs significantly from the amounts claimed for these items by claimants from the same submitting entity. Second Report Addendum, annex I, "Technical Description", para. 8.

189/ In this context, a claim is considered to have an "outlier" amount recommended if the application of either model results in an award of 35 per cent or less of the amount claimed by the claimant. Generally, 95 per cent of claimants in category "C" recovered at least 36 per cent or more of the amounts they claimed for C1-Money and/or C4-CPHO losses.

190/ Fifth Report, para. 16.

191/ Sixth Report, paras. 103-111.

192/ Approximately eight of ten claimants received the amounts claimed.

193/ Sixth Report, para. 110. Generally, fewer than 15 per cent of C4-CPHO claimants were able to provide such primary evidence. None of the claims reviewed had primary evidence (receipts, invoices, bills and similar documentation) to support the inordinately high amounts claimed. This was so even where the primary evidence could be considered fully probative of value and traced to all items claimed for.

194/ There are three relevant loss fields for C4-CPHO losses. The fields for "personal effects" and "household furnishings" are considered as one field for purposes of application of the model. The other two fields are "clothing" and "other".

195/ In arriving at this decision, the Panel considered, inter alia, the initiative by the Governing Council in September 1998 recommending that such action be taken.

196/ For a detailed discussion of the Panel's considerations and the methodology used for motor vehicle claims in the first instalment, see generally First Report, pp. 148-158.

197/ First Report, pp. 153-154.

198/ These countries include Jordan, Saudi Arabia, Turkey, Bahrain, Iran, Syria, Turkey, the United Arab Emirates and Qatar.

199/ First Report, pp. 154-155.

200/ The Panel selected this date as uniform because the actual loss or loss of use of most automobiles took place on or around 2 August 1990.

201/ The values were derived from retail market values provided to PAAC by several major lenders and dealers in the Kuwaiti automobile market. Where market data was not available, PAAC used a statistical analysis to extrapolate results from the available data. For vehicles for which there was no Kuwait-based market data, PAAC's approach was to derive the value, with an appropriate adjustment, from the National Association of Automobile Dealers ("NADA") Used Car Values Manual, which is a standard reference for used car prices in the United States. First Report, p. 156 and note 278.

202/ First Report, pp. 156-157.

203/ Ibid., pp. 157-158.

204/ Second Report, paras. 40-41.

205/ Fifth Report, paras. 12-13. Thus, the Panel determined that for Kuwaiti nationals the recommended amount of compensation should be the lower of the amount of loss claimed for the motor vehicle on the "C4" page of the claim form or the original cost of the vehicle as stated on the "C4" page of the claim form.

206/ This was so because most claimants in the sample had provided the missing information, either on the claim form itself or in the attached documentation. Most claimants would therefore have met the electronic proof of ownership criteria if a manual review of all claims were feasible. The Panel determined that a manual review was not feasible. Sixth Report, paras. 55 and 57.

207/ The total number of C4-MV loss pages with no electronic proof of ownership that were included in the electronic survey was 24,118. Of these, 17,009 had amounts of loss claimed that equaled the original cost or value. Sixth Report, note 69.

208/ Sixth Report, para. 58.

209/ See generally Sixth Report, paras. 59-63. Logistic regression is a well-established statistical tool which has been widely used in the last thirty years. It is standard practice in statistics to modify classic regression methodology in order to model a mathematical transformation of the probability of one given event occurring. For example, using this technique and based on the individual profile of each claimant, it was possible to predict the probability of a given claim being for a lost or stolen vehicle or for repairs. See, e.g., A. Agresti, Analysis of Ordinal Categorical Data (John Wiley & Sons, Inc., New York, 1984); P. McCullagh and J.A. Nelder, Generalized Linear Models 2d ed. (Chapman Hall, New York, 1989).

210/ Sixth Report, para. 65 and notes 79-82.

211/ Ibid., paras. 66-67.

212/ This group was composed of claims that were identified as being for boats or motorcycles.

213/ Sixth Report, paras. 68-72 and accompanying notes.

214/ In connection with the valuation of these losses, PAAC asserted that it had enlisted the assistance of internationally recognized loss adjusters who developed principles and policies in respect of the proper evaluation of losses of many types of property, including boats. In addition, a number of claims reviewers at PAAC had knowledge and experience of the local boat markets. Further, the registration and insurance documents submitted in support of the losses provided specific information about the boats which became the basis for developing a valuation of the boat. Purchase data received from some claimants assisted as a point of reference for others. Finally, loss adjusters regularly contacted local marine retailers to solicit data on the average price of crafts with the specifications of the crafts lost or destroyed and, when satisfied with the validity of the amounts provided by the retailers, used them to complete the claim. No depreciation was used in such an instance.

215/ See para. 197 supra.

216/ See generally First Report, pp. 159-162.

217/ First Report, pp. 164-165.

218/ Second Report, paras. 42-43.

219/ In the sixth instalment, the Panel considered the substantial numbers of claimants, as well as the general data quality and availability of information in the claim files presented to the Commission and determined that the fact that the secretariat had communicated the procedures to the Governments concerned and forwarded the lists to the Kuwaiti Government as stipulated fulfilled the Panel's requirement. Sixth Report, paras. 112-115.

220/ First Report, pp. 165-166.

221/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase)" S/AC.22/1995/R.20/Rev.1 ("First 'EWC' Report"), paras. 185-186. The "EWC"

Panel did not need to make a determination on the effect of the embargo, finding that Iraq was liable to transfer the amounts and that its failure to do so was a direct result of its invasion and occupation of Kuwait.

222/ "Report and Recommendations of the Panel of Commissioners Concerning the First Instalment of "E2" Claims" S/AC.26/1998/7 ("First"E2" Report"), paras. 135-140.

223/ These individuals were generally nationals of countries exporting large labour forces to Iraq.

224/ In addition to requesting information directly from the Missions of the countries concerned, a number of sources were consulted in this research. They include: Sharon Stanton Russell, "Remittances from International Migration: A Review in Perspective", 14 World Development 677-696, (Great Britain, 1986); Nazli Choucri, "The Hidden Economy: A New View of Remittances in the Arab World", 14 World Development 697-712 (Great Britain, 1986); J.S. Birks, I.J. Seccombe and C.A. Sinclair, "Labour Migration in the Arab Gulf States: Patterns, Trends and Prospects", 26 International Migration 267-284 (September 1988); Charles W. Stahl, "Overseas Workers' Remittances in Asian Development", 20 International Migration Review 899-925, (Winter 1986); J. Addleton, "The Impact of the Gulf War on Migration and Remittances in Asia and the Middle East", 29 International Migration 509-525 (December 1991); J.S. Birks, I.J. Seccombe and C.A. Sinclair, "Migrant Workers in the Arab Gulf: The Impact of Declining Oil Revenues", 20 International Migration Review 799-814 (Winter 1986); GB.249/15/7, "Migrant Workers Affected by the Gulf Crisis: Report of the Director-General", International Labour Office (Geneva, 27 February-2 March 1991); The Arab Labor Conventions and Recommendations, (Arab Labor Organization: Arab Labor Office); Dr. A. Bondahrain, "The Arab Labor Organization", International Encyclopedia for Labour Law and Industrial Relations, (Kluwer Law International, The Hague, London, Boston, 1998).

225/ First Report, pp. 166-167.

226/ Third "D" Report, paras. 104-107.

227/ Ibid., para. 113.

228/ This was particularly true in the case of Egypt. Of 200 claims for C5-SOS losses from Egypt that were sampled, 199 claims contained C5-SOS amounts in the electronic database that were not included in the paper claims and that were simply duplicates of C5-BA losses. Therefore, Egyptian claimants were excluded from the recategorization exercise.

229/ It was observed during the review that, in several instances, claimants had purchased cashiers cheques from 25 July 1990 onward, presumably in anticipation of traveling to their home countries to spend the vacation period there. Upon arrival in the home countries and presentation of the cheques after 2 August 1990, the claimants found that local banks would not honour them.

230/ Claimants often presented evidence for valid C5-SOS losses such as stock certificates, but provided no explanation of what their loss was or how it occurred.

231/ The Panel's deliberations and considerations in this respect are detailed in the First Report, pp. 168-173.

232/ See generally First Report, pp. 174-181.

233/ Ibid., pp. 181-182.

234/ Ibid., pp. 182-183.

235/ In arriving at this determination, the Panel had considered that more than 90 per cent of claimants had provided some form of evidence in support of their pre-invasion salary or income level. Evidentiary support included pay stubs, bank statements, wire transfer confirmations, employment contract provisions, employer letters, and published pay scales. Claimants had also provided names of sponsors. Further, the Panel was able to consider background information regarding expatriate employment patterns in Iraq and Kuwait. First Report, pp. 183-184.

236/ First Report, pp. 184-192.

237/ Ibid., pp. 193-194.

238/ Second Report, para. 45. For this purpose, a claimant's C6-Salary claim, in principle, is represented by the aggregate of the amount stated in the "Wages or Salary" and "Other" fields of the "C6" page of the claim form. The Panel's principal rationale for imposing a compensation limit was to minimize the risk of excessive overcompensation, while the actual level of the cap sought to avoid treating less affluent claimants unfairly. Ibid., para. 50.

239/ First Report, p. 181.

240/ See generally Second Report, paras. 44-51.

241/ First Report, p. 183.

242/ Sixth Report, paras. 28-35.

243/ Ibid., para. 35.

244/ Fifth Report, para. 15. In accordance with the Panel's policy on outlier claims, the Panel determined that those claims with outlier predicted monthly salary amounts for C6-Salary losses should be reviewed before being reported. That review was completed in time for all remaining claims to be included in the seventh instalment. However, a few of these outlier claims were included among claims reported in the sixth instalment and were thus awarded no compensation for C6-Salary losses. Corrections to these sixth instalment awards will be included in a subsequent article 41 report.

245/ The Panel chose an option that selected average amounts recommended per salary and nationality groupings. There were six salary ranges that were determined by a standard statistical clustering technique which, for a given number of groups, defines "cut-points" so that the groups are as homogeneous as possible in respect of the distribution of prior monthly salaries. The groups and their ranges were as follows: (a) Group 1: US$750-US$1,130; (b) Group 2: US$1,130-US$1,590; (c) Group 3: US$1,590-US$2,080; (d) Group 4: US$2,080-US$2,630; (e) Group 5: US$2,630-US$3,250; (f) Group 6: more than US$3,250. Sixth Report, para. 78 and notes 95-96.

246/ Sixth Report, paras. 77-78. In the Sixth Report, the Panel also used other electronic surveys and techniques to render hitherto unprocessable C6-Salary claims processable. See, for example, Sixth Report, paras. 73-76, 79.

247/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations ("Category 'F' Claims")", S/AC.26/1997/6 ("First 'F' Report"), paras. 93-96; "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E2" Claims", S/AC.26/1998/7 ("First 'E2' Report"), paras. 156-157, 163; and "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of "E2" claims", S/AC.26/1999/6 ("Second 'E2' Report"), paras. 62, 66, 68(c), 101-106, 131.

248/ First "F1" Report, paras. 95-96.

249/ First "E2" Report, para. 157. The issue before the "E2" Panel concerned losses in Saudi Arabia only.

250/ First "E2" Report, para. 157.

251/ Second "E2" Report, para. 102-104.

252/ The Panel duly noted that 40 claims presenting the same fact patterns had been included among those reported in the sixth instalment, but had not been awarded compensation in respect of C6-Salary losses. The Panel has therefore requested the secretariat to include those claims in an article 41 corrections instalment, to be awarded compensation in accordance with its decisions in this seventh instalment.

253/ First Report, pp. 182-183.

254/ First Report, p. 178.

255/ First "D" Report, paras. 297, 337.

256/ Of approximately 5,300 claims for C6-Support losses that remained to be reviewed after the reporting of the sixth instalment, nearly 4,400 claims were from Egypt. Sample reviews concluded that nearly all of the "support" entries were erroneous and were not reflected in the paper claims. Therefore, all claims were evaluated simply as C6-Salary losses.

257/ See discussion of "multiple" claims supra, paras. 21-25.

258/ These situations were most often identified during the review of claims for C3 death losses, when the date of death preceded 2 August 1990.

259/ Family members could be identified when there were claims for witnessing injury to a family member, additional claims for C1-MPA for forced hiding or illegal detention (the additional claims were for family members) or additional C6-Salary pages. In other instances, they were identifiable from documentation submitted in the claim file.

260/ See, for example, Amiri Decree of August 1976 and Law No. 74 of 1979 of Kuwait (regulating the right of real property ownership of non-Kuwaitis).

261/ See generally First Report, pp. 196-199 (describing the general situation in respect of real property in Kuwait and detailing causes of property damage).

262/ First Report, p. 195.

263/ For a detailed review of the Panel's considerations in the first instalment, see First Report, pp. 203-207.

264/ The Panel based the US$20,000 amount on article 35(2)(c) of the Rules which provides that "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case. A lesser amount of documentary evidence ordinarily will be sufficient for smaller claims such as those below US$20,000".

265/ If the amount claimed in excess of US$20,000 was not fully supported by such documentary evidence, the claim was reduced accordingly, with reference to the amount for which documentary evidence had been submitted, but generally not less than US$20,000, providing that there was a statement as described in para. 310(a) in support of the loss amount.

266/ As described infra, paras. 321-323, the Panel expanded this finding in the seventh instalment to include real property located in Israel, damaged as a result of Iraqi Scud missile attacks.

267/ The four per cent corresponds to the part of the repair amounts claimed that was not supported by primary evidence in the sample group of claims.

268/ The ten per cent corresponds to the part of the other expense amounts claimed that was not supported by primary evidence in the sample group of claims.

269/ In its Second "E2" Report, the "E2" Panel found specifically that these missile attacks constituted actual "military operations" as defined in paragraph 21 of decision 7. Consequently, the "E2" Panel deemed any losses suffered in Israel from 18 January 1991 to 2 March 1991 as a direct result of these military operations to be compensable. Second "E2" Report, paras. 102-104.

270/ Most properties were located in Ramat Gan, Tel Aviv and Haifa, all sites of Scud missile attacks.

271/ These consisted of claims where identical amounts already existed in the correct loss category or where amounts were erroneous entries or for which no information was provided in respect of the nature of the loss claimed. In most situations observed, claimants made no distinction between "real property" and "personal property", using the phrases interchangeably.

272/ S/AC.26/1992/15, para. 9.II(i).

273/ Decision 4 provides that any business that indicates a status of separate legal personality is not eligible for consideration in a category "C" claim. Further, claimants were instructed that claims for jointly owned businesses should be submitted jointly with the other participants in the business in the country in which the business is located.

274/ Approximately 60 per cent of the claimants in the first instalment were engaged in semi-skilled activities, providing technical services or working as tailors, hairdressers and other similar professions. Roughly 20 per cent operated small retail stores. Most of the remaining claimants were involved in the construction business. First Report, p. 218 and note 383.

275/ See generally First Report, pp. 208-211 and accompanying notes. Claims for C8-Business losses in the first instalment were generally based on business losses occurring in Kuwait.

276/ The few exceptions concerned peddlers and limited categories of small shops. First Report, p. 209 and note 354.

277/ Terms were agreed to by the parties, most often only verbally, and varied from case to case. Two types of arrangements were commonly found: (a) the license user ran the business without any interference or financial participation on the part of the license holder, who generally received a fixed monthly fee for the use of the license; and (b) the license holder provided part of the capital and in return received a percentage of the business income. First Report, pp. 209-210.

278/ For a discussion of these criteria and the Panel's methodology in its first instalment, see First Report, at pages 218-225.

279/ In this connection, the Panel requested that, pursuant to article 32(3) of the Rules, one claim be transferred to category "E" because it had corporate, rather than individual, status.

280/ The Panel was reassured by submission of information from the Government of Kuwait that indicated that the role of the license holder was primarily to act as a sponsor. Only rarely did the sponsor furnish business capital. Thus, to the extent Kuwaiti license holders were claiming for the same business, it would most often be to the extent of the income lost for having leased the permit.

281/ The remaining claimants either provided evidence showing that their businesses were sole proprietorships or simple partnerships, or did not provide any information at all related to the legal status of their business. The Panel considered that a claimant's submission of his claim in category "C" was an implied assertion, in the absence of evidence to the contrary, of eligibility to have the business claim processed as a C8-Business loss claim.

282/ In a number of claims in this review, the country of the business location had not been indicated. In many cases, therefore, the review ascertained that the businesses were indeed based in Iraq or Kuwait or that "other" had been erroneously indicated.

283/ In C8-Business losses, an claimant would have incurred losses in an individual capacity, with neither benefit from nor protection through a separate legal personality.

284/ It was determined during the review that one claim was erroneously submitted as a C8-Business loss when it should have been submitted as a claim for C7-Repair costs. The claim was accordingly reclassified and evaluated by the Panel as C7-Repair costs.

285/ Economic Intelligence Unit, Country Report: Israel, No. 1, p. 16 (1996).

286/ Ibid., p. 22.

287/ Second "E2" Report, paras. 101, 106.

288/ Sixth Report, note 113. For a discussion of the Panel's considerations and conclusions in respect of CS-Other losses, see Sixth Report, paras. 89-94.

289/ Claims from India and Bangladesh were included in sample reviews together because the countries represented one fairly homogeneous sampling profile.

290/ This differed from the trend observed in the first instalment. There, however, claims were submitted principally by Pakistan and were quite homogeneous in composition.

291/ While business status was not indicated in the electronic database in approximately 6,000 situations, given all other attributes of the claims and given that single proprietorships accounted for 77 per cent of all commercial establishments in Kuwait, in the absence of evidence to the contrary, the Panel considered these businesses to be sole proprietorships.

292/ These groups represented nearly 80 per cent of the claimant population. Percentage levels for general evidence and primary evidence that were submitted by other countries and international organizations were determined after an individual assessment of claims submitted by those entities.

293/ The data used for the 1989-1990 comparison analysis were taken from statistics regarding the Retail Trade and Services Sector that were obtained from the Central Statistical Office of the Ministry of Planning for the State of Kuwait.

294/ Both percentages for sectoral distribution and macro-economic benchmark amounts for claimant groups representing other submitting entities were determined after individual reviews of the claims.

295/ These macro-economic benchmarks considered that the estimated benchmark loss for the retail trade ("RT") sector was equal to KWD 32,156 (US$111,266), while that for the personal services ("PS") sector was equal to KWD 8,100 (US$28,028). Thereafter, the macro-economic benchmark for each claimant group was calculated by multiplying KWD 32,156 by the percentage of that group's representation in the RT sector and adding that result to the result obtained by multiplying KWD 8,100 by the percentage of the same group's representation in the PS sector.

296/ Sixth Report, paras. 89-94.

297/ Ibid., paras. 81-83.

298/ In such claims, the amount calculated by the C1-Money model in category "C" would have been entirely offset by category "A" awards and there would have been no other compensable loss in the claim.

299/ In connection with the rejection of these claims, the Panel notes, in particular, that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194; Second Report, note 48; Third Report, note 15; Fourth Report, note 25; Fifth Report, note 42; and Sixth Report, note 153.

300/ First Report, pp. 32-33.

301/ See also S/AC.26/1992/16.
